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UNITED NATIONS HUMAN RIGHTS COUNCIL

50th Session of the Working Group on the Universal Periodic Review

October – November 2025

JOINT SUBMISSION TO THE UN HUMAN RIGHTS COUNCIL'S UNIVERSAL PERIODIC REVIEW WORKING GROUP REGARDING THE FOURTH CYCLE OF REVIEW OF MALAWI

7 April 2025

SUBMITTING ORGANISATIONS

The Centre for the Development of People (CEDEP) is a human rights organisation in Malawi, established in November 2005 and registered under the Trustees Incorporation Act of 1962. CEDEP's mission is to create, promote, and protect an enabling legal and social environment for the full realisation of the well-being of sexual minorities and vulnerable populations. The organisation is dedicated to advancing good governance and human rights, as well as enhancing the social, health, and economic well-being of lesbians, gays, bisexuals, transgender, intersex individuals, and other marginalised groups. Through its advocacy and programs, CEDEP works to foster inclusivity and support for these communities in Malawi.

REDRESS is an international human rights organisation that delivers justice and reparation for survivors of torture, challenges impunity for perpetrators and advocates for legal and policy reforms to combat torture and provide effective reparations. As part of its Discrimination programme, REDRESS works to increase accountability for

discriminatory torture perpetrated against LGBTIQ+ (Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer) people in several jurisdictions, including Malawi.

Social Justice Foundation (SJF) is a human rights organisation committed to promoting social and economic justice in Malawi. It focuses on marginalised communities, including survivors of gender-based violence, LGBTQIA+ individuals, and other vulnerable groups. SJF works to build their agency through capacity building, advocacy, and economic empowerment. Its mission is to create an inclusive society where everyone, regardless of background, has equal access to opportunities and can live with dignity and security.

Optimum Foundation is a KP-led organisation dedicated to advancing human rights and social inclusion for marginalised communities, particularly the LGBTIQ+ population. Its mission is to promote equality, and access to justice through advocacy, capacity building, and direct support services. It envisions a society where all individuals, regardless of sexual orientation or gender identity, enjoy equal rights and opportunities.

Angaza Foundation is a marginalised community-led organisation established in 2016 with a national presence in Malawi. The organisation provides services in human rights advocacy, social behavior change communication, and linkage to HIV services, aiming to address gaps in human rights and equitable access to various social services among marginalised groups in Malawi. It envisions a Malawi where all people are empowered, self-reliant, and fully respected, protected and fulfilled.

Gender Collective is a KP-led organisation dedicated to advancing the rights, health, and well-being of LGBTIQ+ individuals in Malawi. Through advocacy, capacity building, and service provision, we work to reduce stigma, discrimination, and violence while ensuring access to inclusive healthcare, including HIV prevention services. Gender Collective actively advocates against gender-based violence and promotes social and economic inclusion for LGBTIQ+ communities by engaging stakeholders, influencing policies, and creating opportunities for sustainable livelihoods.

Community Health Rights Advocacy (CHeRA), founded in 2016, is a Malawi-based NGO advancing health rights for marginalised male sex workers (MSWs), with a focus on HIV prevention. Led by MSWs, it combats violence, promotes inclusion, and advocates for decriminalisation. CHeRA empowers MSWs to claim their rights, reduce abuse, and improve healthcare access. Aligned with SDGs, AU policies, and human rights frameworks, it pushes for recognition of sex work as legitimate work. Through partnerships, CHeRA strengthens Malawi's HIV response and upholds global health targets.

Ask for Equality (ASKE) is a trans-led non-profit organisation dedicated to supporting the health and well-being of lesbian, bisexual, and queer women, transgender individuals, and gender non-conforming people. Their mission is to create a safe and inclusive space where individuals can access resources, build community, and advocate for their rights. ASKE provides a range of services, including mental health support, social programs, and advocacy initiatives, to empower individuals and foster a more equitable society.

Nyasa Rainbow Alliance is an LGBTQIA+ led organisation established in 2014. The Alliance was established after realising the implementation gaps within the existing LGBTQIA+ organisation and their scope of work. Nyasa Rainbow Alliance derived its strength from a group of LGBTQIA+ persons who came together to support the LGBTQIA+ community drawing from personal lived experiences including challenges of

living as an LGBTQIA+ person in Malawi. Nyasa Rainbow Alliance was inspired by peer educators living in the Southern Region of Malawi who strive to address challenges faced by the LGBTQIA+ community, including human rights violations, inaccessibility of health services, stigma and discrimination, and the lack of community driven initiatives.

The Centre for Key Population Rights (CKPoR) is a leading organisation advocating for the rights of key populations in Malawi, with a focus on HIV prevention, care, and treatment, for indivduals facing stigma and discrimination.

The IVY Foundation is a non-governmental organisation dedicated to supporting LBIQ (lesbians, bisexuals, intersex, and queer) individuals in Malawi. Established in 2016, the foundation operates in the major cities of Blantyre, Lilongwe, and Mzuzu, focusing on human rights, health, advocacy, awareness, and education. We strive to enhance sustainable development by improving the social basic needs and inclusion of LBIQ persons in various sectors, including education and healthcare. Our mission includes advancing gender equality and empowerment by promoting sexual and reproductive health alongside human rights.

INTRODUCTION

1. CEDEP, its nine partner organisations under the Human Rights Grants (see above), and REDRESS, make this submission as part of the 4th Cycle of the Universal Periodic Review (UPR) to highlight the issue of discriminatory violence, including torture, affecting individuals who identify as or are perceived to be LGBTIQ+ in Malawi. This submission identifies patterns of violence, intimidation, extortion, and harassment by law enforcement officers against the LGBTQ+ community.

2. It also raises concerns about the lack of concerted efforts by the Government of Malawi to effectively protect LGBTIQ+ individuals from torture, other forms of violence, and discrimination since its 3rd UPR cycle. During that UPR cycle in 2020, Malawi noted but not supported numerous recommendations from at least 13 UN member States to decriminalise consensual same-sex relations, to protect LGBTIQ+ persons and fight discrimination based on sexual orientation and gender identity.[i]

3. Malawi's position in 2020 contradicts the stance taken in the 2015 UPR cycle. On that occasion, Malawi had agreed to take "effective measures to protect lesbian, gay, bisexual and intersex persons from violence and prosecute the perpetrators of violent attacks" and to guarantee that LGBTIQ+ persons "have effective access to health services, including treatment for HIV/AIDS."[ii] The fact that those recommendations were not adopted by Malawi in 2020, and that ongoing violence and discrimination against this community remain concerning—as stressed in this submission—demonstrates the Government's failure to uphold its international obligations under the UN Convention against Torture (UNCAT) and other human rights treaties to effectively protect LGBTIQ+ persons from torture and other forms of violence, as well as to ensure equality and non-discrimination.

4. This submission is informed by our extensive experience working against torture and on other LGBTIQ+ rights in Malawi. In addition to direct experience of national and local organisations, this submission draws on the report *Un*equal Justice: Accountability for Torture Against LGBTIQ+ Persons in Africa which highlights the pervasive practice of torture against LGBTIQ+ persons in specific African states, including Malawi.

5. It is also based on CEDEP's and its nine partner organisations' recent documentation of human rights violations against LGBTIQ+ persons in Malawi, carried out using a standardised tool, with findings shared monthly and quarterly by each organisation. As part of this documentation exercise, implementing organisations received trainings, awareness-raising was conducted in communities, and reporting and referral mechanisms were established. Individuals in Malawi reported experiences of gender-based violence through peer educators conducting screenings or passively by approaching them on their own initiative.

6. The submission is organised into two main sections:

   - The first section explores the violence and discrimination experienced by LGBTIQ+ individuals in Malawi, highlighting specific patterns and significant threats to their safety and well-being. It also addresses the lack of accountability for such violence, caused by barriers to safe reporting and inadequate investigations.

   - The second section offers a set of recommendations for the Government of Malawi, detailing actionable measures to protect and ensure the rights of LGBTIQ+ individuals. These recommendations are designed to promote inclusivity, uphold

human rights, and ensure that LGBTIQ+ individuals can live free from torture, violence, and discrimination.

CONTEXT OF ANTI-LGBTIQ+ TORTURE IN MALAWI

Criminalisation of consensual same-sex conduct

7. The criminalisation of same-sex conduct or behaviours related to diverse sexual orientations and gender identities often reinforces State violence and promotes discriminatory and violent actions by non-State actors.[iii] In Malawi, homosexuality is criminalised under laws that impose severe penalties, including imprisonment for up to 14 years.[iv] Notably, in 2010, Steve Monjeza and Tiwonge Chimbalanga were sentenced to 14 years for "unnatural offenses against the order of nature."[v] More recently, in 2021, Jana Gomani, a transgender woman who works as a sex worker, was charged with two counts, including for committing an unnatural offense after having sex with a man from whom she had allegedly stolen a phone.[vi] These cases exemplify the ongoing use of criminalising laws to target LGBTIQ+ persons.

8. This legal framework creates a climate of fear and fuels discrimination and violence against LGBTIQ+ individuals.[vii] Indeed, such criminalising laws marginalise LGBTIQ+ persons as legitimise differential treatment, suggesting that LGBTIQ+ individuals do not deserve the same protection afforded to everyone else. It also increases the chance of physical and mental assault of victims upon arrest.[viii]

9. On 28 June 2024, Malawi's Constitutional Court dismissed a challenge to the criminalisation of same-sex conduct. The Court's ruling reaffirmed the constitutionality of specific sections of the penal code that criminalise homosexuality, maintaining the legal framework that contributes to the marginalisation of LGBTIQ+ individuals in the country.[ix] The ruling exacerbates risks of arbitrary arrests and prosecutions, physical violence, and discrimination against LGBTIQ+ people in Malawi, effectively leaving the power to guarantee LGBTIQ+ rights to parliament. There is also further risk that LGBTIQ+ persons will be excluded from access to health care, justice, and security.[x]

10. Following the judgment, discrimination, victimisation, and bullying towards LGBTIQ+ individuals escalated significantly.[xi] The ruling appeared to embolden those who harbour anti-LGBTIQ+ sentiments, leading to increased hostility and violence against this already marginalised community. Victims reported a rise in hate crimes, social exclusion, and psychological harassment, creating an even more concerning environment of fear and insecurity.[xii] Many LGBTIQ+ individuals faced intensified challenges in accessing essential services, further exacerbating their vulnerability and marginalisation in society.

11. The absence of legal recognition of the rights of LGBTIQ+ individuals and the safeguards to protect them has a detrimental effect on the State's duty to prevent, investigate, and prosecute human rights violations, including torture, ill-treatment, and other forms of violence perpetrated against its citizens because of their sexual orientation or gender identity or expression.[xiii] This is compounded by deeply entrenched structural discrimination within State institutions, resulting in a culture of impunity that replaces any willingness to address violence against this community.[xiv]

Discrimination

12. Owing to the discriminatory structures in place, LGBTIQ+ people in Malawi face routine violence and discrimination in almost all aspects of their daily lives.

13. *Social Stigma*. Deep-rooted cultural and religious beliefs contribute to social stigma against LGBTIQ+ individuals. This stigma often leads to ostracisation, and social exclusion, making it difficult for them to access basic services, including healthcare and

education.[xv] This stigmatisation also hinders LGBTIQ+ individuals from reporting torture or other forms of violence to the relevant authorities.

14. *Lack of Support or Access to Essential Services.* Based on our experience, there is a shortage of support services for LGBTIQ+ individuals in Malawi, including safe spaces, mental health resources, and legal aid. For instance, interviews conducted by Human Rights Watch in 2023 exposed the fact that LBTQ+ women in Malawi were dying of untreated sexually transmitted infections and other complications related to sexual assault due to their inability to safely seek care at public hospitals due to structural discrimination.[xvi] These obstacles to access essential services remain unaddressed. For example, a male client of the Social Justice Foundation has been denied access to crucial medical treatment simply because the attending phsyician disapproved of the patient's effeminate demeanour.

15. *Challenges Faced by Local or National Oganisations.* Organisations engaged in advocacy and litigation to tackle violence or discrimination against LGBTIQ+ persons in Malawi often operate under threat, in a hostile environment that limits their ability to provide assistance. Their work is frequently met with resistance from State authorities or other stakeholders with whom they engage to push for reforms.

16. *Denial of Opportunities*. LGBTIQ+ individuals based in more rural communities continue to face marginalisation under traditional leadership structures. These leaders, regarded as arbiters in the local communities, continuously exacerbate discrimination levelled against LGBTIQ+ individuals. They do so by consciously denying these individuals access to vital community resources, such as fertiliser coupons, as well as forcibly excluding them from the village, along with other economic benefits like cash transfers.

17. *Perpetual and Holistic Systemic Discrimination*. Malawi continues to enforce systemic discrimination against LGBTIQ+ individuals through the deliberate exclusion of LGBTIQ+ content from official documents and State systems, including the national medical curriculum. This erasure leaves key service providers—such as healthcare workers and law enforcement—untrained and ill-equipped to meet the needs of LGBTIQ+ people. Medical professionals, for example, often encounter LGBTIQ+ patients without any prior education on how to offer culturally competent care. This institutional neglect not only compromises the quality of services but also reflects a broader governmental failure to uphold the human rights of LGBTIQ+ individuals and to foster an inclusive, rights-based environment.

18. Despite this, there are active organisations advocating for the rights of LGBTIQ+ individuals in Malawi, including the organisations making this submission. These groups strive to raise awareness, provide support, and push for legal reforms. Nonetheless, given the hostility against the LGBTIQ+ community, it is crucial to recognise the vital role of civil society organisations in addressing discriminatory violence and supporting victims—especially in the face of State inaction—and to ensure they can operate freely.[xvii]

Anti-LGBTIQ+ torture and other forms of violence

19. LGBTIQ+ individuals in Malawi encounter pervasive violence, which includes arbitrary arrests, physical assaults, sexual violence, threats of violence, harassment, and emotional abuse perpetrated by both State and non-State actors. Many individuals report being targeted by law enforcement officials as well as community members.

20. Reports received by the organisations making this submission indicate that police officers engage in acts of torture, extortion, and harassment against individuals perceived as LGBTIQ+. Reports of State violence include cases of transgender women stripped naked in police stations to identify their genitalia, lesbian women raped and insulted for their sexual orientation, and transgender men physically assaulted by police officers as a result of their gender identity.[xviii] In one particular case, a policeman was blackmailed and detained by his fellow officers for his homosexual orientation. During his detention, he was physically assaulted and repeatedly molested by female police officers through sexual stimulation.[xix] Additional reports received by the Social Justice Foundation expose instances where police officers have subjected openly gay men—particularly those perceived to have effeminate demeanours—to corporal punishment, grotesquely framing this abuse as a form of "behavioural correction." This practice not only constitutes a blatant violation of human rights but also reflects deeply entrenched discrimination within law enforcement institutions.

21. LGBTIQ+ individuals are often refused medical or police assistance after the attacks, which at times are also followed by verbal aggression from public officers. Therefore, it is not uncommon for LGBTIQ+ persons not to report cases of violence to State authorities and for them to avoid seeking medical assistance due to such fear of further discrimination, harassment, and abuse. For instance, a lesbian woman who was assaulted by her family and burnt with hot iron, decided not to report the episode to the police, fearing detrimental repercussions.[xx] In a separate case, a transgender woman was attacked by a mob, physically assaulted and stripped naked, whilst the attackers claimed that she was being punished for being "non-conforming". The victim requested the aid of the police but was denied assistance and insulted by the officers. The recording of the assault was uploaded to social media, and yet the case has not been prosecuted or investigated.[xxi] This creates a climate of fear that discourages victims from seeking justice.

22. Other cases recently documented by the submitting national organisations, include cases of torture, ill-treatment, intimidation, extorsion, and verbal harassment by police officers. Victims suffered severe beatings, were verbally abused, and coerced into paying bribes under the guise of police service. They reported being targeted because of discrimination based on perceived or actual sexual orientation or gender identity.

23. The following case studies were conducted via consultations by the organisations making this submission with individuals in local communities, and they provide examples of how these patterns manifest in practice in individual cases. Many cases were anonymised to protect the identity and safety of the victims. They are examples of a larger number of similar cases documented, which demonstrate patterns of violence identified during the documentation project.

Torture and ill-treatment by State authorities

24. Mada (not his real name) was arrested in May 2022 and tortured by the police due to being perceived as gay. He was placed on remand at Chichiri Prison, held for several months in detention, until his release in August 2022. During his time in prison, he was severely beaten by hand by police officers, denied access to visitors, and subjected to verbal abuse.

25. Chisomo (not her real name), a transgender woman, was arrested by the police on 20 October 2021 in Blantyre. While in detention, officers forced her to undress to confirm her identity. They then beat her to extract information, specifically the names of

individuals they believed had encouraged her to identify as gay. She reported the case to Nyasa Rainbow Alliance.

26. Tamani (not his real name) visited the Mangochi District police station to assist a friend as a witness in a case involving allegedly stolen money via mobile phone. While explaining his role, a police officer began to intimidate him, insisting he should 'speak like a man' rather than a woman. He was then assaulted by the police and branded a thug masquerading as a woman to steal. After the attack, he managed to escape and sought help from CEDEP.

Threats, intimidation, and harassment

27. Chikondi (not her real name), a transgender woman residing in Manase township, Blantyre, has been receiving threats and harassment from a local gang since early March 2023 after being released from prison. She reported the incidents to the Manase police at least twice, but as of today, there has been no intervention from the authorities, and she continues to feel unsafe.

28. On 13 September 2024, in Makawa, Mangochi, a transgender woman (TGW) and two friends went to the Ulongwe Police Unit to report the theft of the victim's personal items, including a cell phone, money, and welding machines. The police demanded K10,000 for a vehicle to apprehend the suspect. The victim transferred the amount via mobile money, but when she returned to confirm, the officer denied receiving the payment. After verifying the transaction, the victim returned to the police unit, where officers accused her and her friends of theft and homosexuality, subjected them to threats, and forcibly seized her phone. The incident was reported to the Mangochi CEDEP drop-in center and the Social Justice Foundation. It highlights police misconduct, extortion, and discriminatory treatment based on gender identity and perceived sexuality, underscoring the need for accountability within law enforcement.

29. On 3 December 2024, Tamandani (not her real name), a transgender woman, was out clubbing with a friend. After their night out, they hugged on the street as they prepared to part ways. Two police officers in a vehicle stopped them and demanded they continue hugging in front of them. Tamandani explained that hugging is a normal social gesture, but the officers insisted they were engaging in homosexual acts and threatened to arrest them. When Tamandani asserted her understanding that Malawian law does not prohibit hugging, the officers changed their accusation to being out late while intoxicated. When she mentioned contacting their superior, the officers retreated, allowing her to return home safely.

30. On 9 August 2021, Zikani and Mphatso (not their real names) visited the Chilobwe Police Station to apply for bail for their Peer Educator, William, who had been jailed on accusations of non-consensual sex with a peer. Upon discovering the nature of their visit, the officer on duty verbally abused them, calling them names such as homosexuals, gays, and "mathanyula."[xxii]

31. The incidents outlined reflect a concerning trend of police abuse and misconduct in Malawi, undermining LGBTIQ+ individuals' safety and trust in the authorities. It is imperative for the UN, its Member States, and relevant human rights organisations to address these violations and provide essential support for reform and accountability in Malawi's law enforcement practices.

Failure to uphold obligations related to torture

Lack of criminalisation of torture

32. UNCAT and the African Charter on Human and Peoples' Rights explicitly prohibit torture in all its forms against any individual, including LGBTIQ+ persons. These treaties, which were ratified by Malawi, emphasise the obligation of the Malawian Government to protect the rights and dignity of all people, including those in marginalised communities.

33. While ratifying a treaty is a crucial step toward upholding the absolute prohibition of torture, this must be followed by concrete reforms to integrate strong legal standards into the domestic framework. Effectively incorporating and enforcing anti-torture standards in domestic legal frameworks is essential to preventing torture, ensuring accountability, and providing redress for victims. Strong laws and policies promote humane, coercion-free investigations, improve the criminal justice system, and reinforce the rule of law. In turn, this helps reduce corruption, enhance fair justice administration, and build public trust in State institutions.[xxiii]

34. In Malawi, the Constitution prohibits "torture of any kind or cruel, inhuman or degrading treatment or punishment"[xxiv] noting that "there shall be no derogation with regard to the prohibition of torture and cruel, inhuman or degrading treatment or punishment."[xxv] It also provides relevant safeguards against torture and other ill-treatment in cases of detention under a state of emergency, including notification of the detention to family members within 48-hours, and regular judicial review of the detention.[xxvi]

35. Despite the prohibition of torture in Malawi's Constitution, cases of torture or other offences against LGBTIQ+ individuals that involve State authorities are frequently neither investigated nor prosecuted. One of the reasons may be due to the fact that Malawi has not yet criminalised torture as a separate offence under domestic law.[xxvii] The lack of criminalisation also means that acts amounting to torture can only be prosecuted as other ordinary criminal offences, such as assault, grievous harm, rape, among others.

36. Criminalisation and prosecution of violence against LGBTIQ+ persons as torture – in cases where the requirements of Article 1 of UNCAT are met – is essential to recognise the gravity of the crime and to deter further violence. It is also necessary to ensure acts of torture are punished with adequate penalties, proportionate to the gravity of the crime, as torture would be expected to have more severe penalties than other ordinary offences.[xxviii]

37. Additionally, it is important that a 'gender perspective' informs the approach to the criminalisation of torture, because this will shed light on the gravity of such violations rooted in discriminatory social norms around gender and sexuality, and ensure these are acknowledged, addressed, and remedied.[xxix] Such a perspective also provides "a framework for addressing multiple asymmetries of power (deriving from how sex is constructed and operates in societies), including those that feed violence and discrimination against women; and …[is] also a sharp lens for analysing the root causes of violence and discrimination based on sexual orientation and gender identity and expression."[xxx]

38. Finally, a gender perspective can contribute to public awareness-raising of violence against LGBTIQ+ persons as torture (where it meets the necessary standards), as well as the prevalence of such crime. Consequently, it can provide grounds for the public to monitor and challenge the State regarding its duty to prevent and respond to torture committed against LGBTIQ+ persons.[xxxi]

Lack of accountability

39. Under UNCAT, States are obligated to prohibit, prevent, investigate, prosecute, punish, and provide redress for torture committed against all persons, including LGBTIQ+ individuals. However, Malawi has not demonstrated due diligence in preventing, investigating, and punishing acts of violence against this community. Reasons for this include structural discrimination in Malawian institutions – there is a clear absence of political will and ongoing institutional discrimination (as discussed above), a lack of appropriate training of State officials – particularly law enforcement, prosecutors, and members of the judiciary – and absence of gender sensitive protocols on the effective investigation of such violence.[xxxii]

40. In terms of the efficacy of investigations, cases of LGBTIQ+ torture and other ill-treatment in Malawi are often not adequately investigated. The High Court of Malawi has recognised an urgent need to improve investigations into officer misconduct, including torture and other ill-treatment, having ruled that State authorities failed to investigate incidents of sexual and gender-based violence:

> Such failure to promptly and effectively investigate the sexual violence, contributes to the impunity of perpetrators of such crimes and reduces the number of women who report such cases because they lack confidence in the state security institutions (...). Effective access to justice is an essential human right and it starts with effective investigation of violation of the human rights.[xxxiii]

41. While no similar decisions were identified specifically in relation to torture and ill-treatment against LGBTIQ+ persons, the general principles of accountability for human rights violations, as recognised by the High Court of Malawi, suggest that the lack of effective investigations contributes to impunity. This failure to investigate adequately could also extend to cases involving discriminatory violence against the LGBTIQ+ community, perpetuating a cycle of underreporting and lack of prosecution.

42. This failure to investigate and prosecute torture cases in Malawi can lead to increase in violence and discrimination towards LGBTIQ+ individuals.[xxxiv] As such, the cases reported to CEDEP, and partner organisations often go unprosecuted, as victims frequently withdraw their complaints out of fear of public exposure. This fear stems from the potential for increased discrimination, given that the current environment in Malawi remains hostile towards the LGBTIQ+ community. This results in underreporting which, combined with the inadequate investigation of reported cases, ultimately results in low rates of accountability for such discriminatory torture.[xxxv]

43. Even in cases where LGBTIQ+ violence is addressed and perpetrators are convicted, the discriminatory purpose is often not accounted for and, consequently, courts do not consider the root causes of such discriminatory violence. In 2020, CEDEP reported the case of a lesbian woman who was raped by a man who wanted to “correct” her sexual orientation and told her she needed to know what it was like to engage with a man. After being rescued by community members, the victim filed a complaint with the police authorities. However, because of the criminalisation of same-sex conduct, the victim was unable to disclose her sexual orientation as she feared being arrested. Following investigation and prosecution, the perpetrator was eventually convicted of rape, and sentenced to 14 years of imprisonment, though the discriminatory element was not considered.[xxxvi]

44. When States fail to hold perpetrators accountable in a manner that is aligned with international standards, meaning that it captures the discrimination suffered by

LGTBIQ+ persons,[xxxvii] they neglect victims, perpetuate impunity, and become complicit in the ongoing cycle of violence.[xxxviii]

45. This neglect also contributes to a lack of trust in authorities (as mentioned above) and, consequently, underreporting of cases of violence against this community, hindering an understanding of the full scale of the problem. As noted by the Southern Africa Litigation Centre (SALC) in relation to the LGBTIQ+ community in Malawi in 2020, a "community consultation and other studies confirm the lack of trust in and access to complaints mechanisms" and recommended that such mechanisms "should guarantee confidentiality and immunity from prosecution for persons reporting rights violations".[xxxix]

RECOMMENDATIONS

46. In light of the previous considerations, we invite UN Member States to consider making the following recommendations to Malawi in their 4th UPR cycle:

Legislative reforms

a) Introduce or amend national legislation to criminalise torture, as defined in article 1 of UNCAT, as a separate offence subject to punishment commensurate with the gravity of the crime (6 to 20 years).

b) Repeal all discriminatory laws and provisions, particularly decriminalising consensual same-sex activities.

c) Ensure the effective investigation and prosecution of all offences against LGBTIQ+ individuals, including sexual and gender-based violence, in accordance with the principles of equality and non-discrimination.

Policy reforms

d) Develop effective methods to collate disaggregated data on LGBTIQ+ violence and document reports of violence against LGBTIQ+ individuals by State and non-State actors through national human rights institutions and/or law enforcement agencies.

e) Develop and adopt a best practices protocol and/or guidelines into the effective investigation of allegations of LGBTIQ+ violence, based on international standards and following consultation with relevant stakeholders, including civil society organisations.

f) Ensure effective investigations into violence against the LGBTIQ+ community are carried out promptly and impartially by independent bodies, ensuring accountability of perpetrators.

g) Create an independent body to oversee police conduct, receive and address complaints of torture and other human rights violations.

h) Encourage State representatives and officials to issue public statements in support of the protection of the rights of all persons and publicly condemn violence-based discrimination on grounds of sexual orientation and gender identity perpetrated by State and non-State actors.

Educational and other initiatives

i) Provide an ongoing and rolling program of obligatory training on the rights of LGBTIQ+ individuals and anti-torture standards (including in relation to LGBTIQ+ violence) for law enforcement officials and other State institutions, including

national human rights institutions, police and prison officers, border guards, immigration officers, medical personnel, prosecutors, and members of the judiciary.

j) Incorporate comprehensive education on issues regarding sexual orientation and gender identity in school curricula, in line with Principle 16 of the Yogyakarta Principles, covering non-discrimination, equality and gender roles, and sexual diversity, to raise awareness and promote cultural change and acceptance, and eradicate practices that may legitimise or exacerbate violence and discrimination against LGBTIQ+ persons.

k) Launch awareness campaigns to educate the public about the human rights of LGBTIQ+ persons, and the proper channels for reporting police misconduct. In particular, encourage public education on the role of the Independent Police Commission.

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[i] Human Rights Council, Report of the Working Group on the Universal Periodic Review, Malawi, 23 December 2020, UN Doc. A/HRC/46/7, paras 124.12 -124.25.

[ii] Human Rights Council, Report of the Working Group on the Universal Periodic Review: Malawi, 20 July 2015, A/HRC/30/5, paras 110.93 and 110.26.

[iii] REDRESS and CEDEP, *Un*equal Justice: Accountability for Torture Against LGBTIQ+ Persons in Africa, 2022, p. 61.

[iv] Malawian Penal Code Act, ss. 153(1), 153(c) and 156.

[v] The Guardian, Malawian gay couple jailed for 14 years, 20 May 2010. That being said, they were suseuqetly released following a presidential pardon. See BBC, Malawi gay couple released after presidential pardon, 30 May 2010.

[vi] For an overview of the case, see Cornell Law School Women and Justice Collection, *S v. Jana Gonani*.

[vii] REDRESS and CEDEP, *Un*equal Justice: Accountability for Torture Against LGBTIQ+ Persons in Africa, 2022, p. 61-62. See also, The New York Times, Gay Couple Convicted in Malawi, 18 May 2010.

[viii] The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), State-Sponsored Homophobia, March 2019.

[ix] Jurist News, Malawi court dismisses case to legalise same-sex relationships, 29 June 2024.

[x] Human Rights Watch, 'Dark Day' in Malawi for Rights of LGBT People: Consitutional Court Upholds Criminzaliation of Same-Sex Conduct, 11 July 2024.

[xi] AfricaBrief, Homophobic Acts Against LGBTQ+ Malawians Grpw Six Months after Landmark Court Decision, 20 December 2024.

[xii] This information is based on the cases that are reported to the national organisations making this submission.

[xiii] REDRESS and CEDEP, *Un*equal Justice: Accountability for Torture Against LGBTIQ+ Persons in Africa, 2022, p. 67.

[xiv] Ibid. See also Thengo Kavinya, 'Malawi's LGBTI controversy' (2023) 35(2) Malawi Medical Journal 130-131.

[xv] Re:solve Global Health, Improving LGBTQ+ care among Malawi's health workers, 11 July 2024. See also, Erasing 76 Crimes, Discrimination, prejudice, keep LGBT Malawians away from medical care, 3 August 2024.

[xvi] Human Rights Watch, "This Is Why We Became Activists": Violence against Lesbia, Bisexual, and Queer Women and Non-Binary People, 14 February 2023.

[xvii] REDRESS and CEDEP, *Un*equal Justice: Accountability for Torture Against LGBTIQ+ Persons in Africa, 2022, p. 69.

[xviii] Ibid; and cases reported to CEDEP.

[xix] Nyasa Rainbow Alliance (NRA) and others, Civil Society Report on LGBTI Rights (Contribution to the List of Issues Prior to Reporting) to Human Rights Committee 131st session, March 2021.
[xx] Ibid.
[xxi] Ibid.
[xxii] The Chichewa word that translates to homosexuality, and is used as a pejorative term. See further, The Other Foundation, Canaries in the Coal Mines: An analysis of spaces for LGBTI activism in Malawi, 2017 p. 35.
[xxiii] REDRESS and the Convention against Torture Initiative (CTI), Anti-Torture Standards in Common Law Africa: Good Practices and Way Forward, 2022, p. 6. See also, CAT, General Comment No. 2: Implementation of Article 2 by State Parties, 24 January 2008, UN Doc. CAT/C/GC/2; ACommHPR, General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), 4 March 2017.
[xxiv] Constitution of the Republic of Malawi, 1994, s. 19(3).
[xxv] Ibid, s. 45(4).
[xxvi] Ibid, s. 45(7).
[xxvii] In 2022, CAT raised concerns about the fact that Malawi has not criminalised torture as a separate offence. Noting that ordinary offences in the Penal Code "do not cover acts of psychological torture; lack the specific purposes listed in article 1 of the Convention; and provide for penalties that are not necessarily commensurate with the gravity of the crime", CAT recommended criminalisation of torture as a separate offence. See CAT, Concluding Observations on the initial report of Malawi, 9 December 2022, UN Doc. CAT/C/MWI/CO/1.
[xxviii] REDRESS, Legal Frameworks to Prevent Torture in Africa: Best Practices, Shortcomings and Options Going Forward, 2016.
[xxix] Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 January 2016, UN Doc. A/HRC/31/57, para. 6.
[xxx] Human Rights Council, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, 3 June 2021, UN Doc. A/HRC/47/27, para. 7.
[xxxi] CAT, General Comment No. 3: Implementation of Article 14 by States Parties, 13 December 2012, UN Doc. CAT/C/GC/3.
[xxxii] REDRESS and CEDEP, *Un*equal Justice: Accountabiltiy for Torture against LGBTIQ+ Persons in Africa, 2022, p. 67.
[xxxiii] Malawi High Court General Division, *S v. IG of Police, Clerk of the National Assembly & Minister of Finance ex-parte MM & Ors.* (Judicial Review 7 of 2020) [2021] MWHC 28 (09 March 2021), paras. 112 and 117.
[xxxiv] Human Rights Watch, "Let Posterity Judge": Violence and Discrimination against LGBT people in Malawi, 26 October 2018.
[xxxv] REDRESS and CEDEP, *Un*equal Justice: Accountability for Torture Against LGBTIQ+ Persons in Africa, 2022, p. 68.
[xxxvi] Ibid, p. 57.
[xxxvii] REDRESS, Investigating Torture against LGBTIQ+ Persons: A Step Towards Accountability, June 2023, pp. 8-10.
[xxxviii] Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 January 2016, UN Doc. A/HRC/31/57, para. 10.
[xxxix] Southern Africa Litigation Centre (SALC), "We get traumatised in different ways": Key issues related to sexual orientation, gender identity and expression identified by a community consultation in Malawi, October 2020, p. 31.