

Annex 1: African Commission on Human and Peoples’ Rights Resolution 275¹⁰⁶

275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity

The African Commission on Human and Peoples’ Rights (the African Commission), meeting at its 55th Ordinary Session held in Luanda, Angola, from 28 April to 12 May 2014:

Recalling that Article 2 of the African Charter on Human and Peoples’ Rights (the African Charter) prohibits discrimination of the individual on the basis of distinctions of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status;

Further recalling that Article 3 of the African Charter entitles every individual to equal protection of the law;

Noting that Articles 4 and 5 of the African Charter entitle every individual to respect of their life and the integrity of their person, and prohibit torture and other cruel, inhuman and degrading treatment or punishment;

Alarmed that acts of violence, discrimination and other human rights violations continue to be committed on individuals in many parts of Africa because of their actual or imputed sexual orientation or gender identity;

Noting that such violence includes ‘corrective’ rape, physical assaults, torture, murder, arbitrary arrests, detentions, extra-judicial killings and executions, forced disappearances, extortion and blackmail;

Further alarmed at the incidence of violence and human rights violations and abuses by State and non-State actors targeting human rights defenders and civil society organisations working on issues of sexual orientation or gender identity in Africa;

Deeply disturbed by the failure of law enforcement agencies to diligently investigate and prosecute perpetrators of violence and other human rights violations targeting persons on the basis of their imputed or real sexual orientation or gender identity;

- 1) **Condemns** the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity;
- 2) **Specifically condemns** the situation of systematic attacks by State and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity;
- 3) **Calls on** State Parties to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities; and
- 4) **Strongly urges** States to end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.

¹⁰⁶ ACHPR Resolution 275 <http://www.achpr.org/sessions/55th/resolutions/275>

Adopted at the 55th Ordinary Session of the African Commission on Human and Peoples' Rights in Luanda, Angola, 28 April to 12 May 2014

Annex 2: Letter to Malawi Human Rights Commission, June 16, 2017

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June 16, 2017

Malawi Human Rights Commission
Off Paul Kagame Road
Private Bag 378 Private
Lilongwe 3
Malawi

Tel: [REDACTED]
To: **Mr. Harry Migochi**
Director of Economic Social and Cultural Rights
Mr. Peter Chisi
Director of Civil and Political Rights

Via e-mail: [REDACTED]

Re: Request for information regarding national survey on lesbian, gay, bisexual and transgender persons

Dear Sirs,

Please allow us to take this opportunity to commend the Malawi Human Rights Commission for participating in the training programme hosted by the Network of African National Human Rights Institutions (NANHRI) on sexual orientation, gender identity and human rights in March 2017 in Kenya. We anticipate that your engagement in the NANHRI project will contribute to the protection of human rights of lesbian, gay, bisexual and transgender (LGBT) persons in Malawi.

Human Rights Watch is an international human rights organization that conducts research and advocacy on human rights issues in over 90 countries worldwide, including in Malawi, where we [documented](#) the human rights impact of the mining industry on rural communities in 2016. Human Rights Watch has since 2009 monitored legal developments regarding LGBT issues in Malawi, including the



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moratorium on prosecuting consensual same-sex conduct reaffirmed by the government in December 2015.

We are writing today to request further information regarding an article published in the *Sunday Times* on June 4, 2017, “Homosexual survey rolls out in July, says MHRC.” According to this news report, the survey “aims at getting the views of Malawians for the country’s firm position on lesbians, gays, bisexuals, and transgender” persons. The Human Rights Commission has reportedly finalized the data collection methodology, will convene a stakeholders meeting on June 19, 2017 for validation, and will submit a final report to the Ministry of Justice by the end of October 2017.

Human Rights Watch has consulted with Malawian activists and representatives of human rights organizations, including the Centre for the Development of People (CEDEP), which expressed concern that the hearings and survey may be an attempt to hold a referendum-style survey to decide on the criminalization of consensual adult same-sex conduct. The fundamental human rights of a minority should never be subject to the views of a majority. Recognizing that the protection of human rights of LGBT persons in Malawi remains highly contentious, we respectfully request further information regarding:

1. the purpose of the survey;
2. the basic data collection methodology;
3. the extent to which international and regional human rights norms and standards were considered in developing the survey and data collection methodology; and
4. whether the survey is a component of the strategy adopted by the Malawi Human Rights Commission following the NANHRI training in Nairobi.

We look forward to receiving your response.

Kindly reply to our Researcher, Ms. Wendy Isaack, at +1 212 216 1271 / isaackw@hrw.org.

Sincerely,



Graeme Reid
Director, LGBT Rights Program
Human Rights Watch

Annex 3: Letter to Malawi Human Rights Commission, July 5, 2017

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Fax: +1-212-736-1300; 917-591-3452

June 16, 2017



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To: Mr. Harry Migochi
Director of Economic Social and Cultural Rights

Mr. Peter Chisi
Director of Civil and Political Rights

Via e-mail:



Re: Request for information regarding national survey on lesbian, gay, bisexual and transgender persons

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We look forward to receiving your response.

Kindly reply to our Researcher, Ms. Wendy Isaack, at +1 212 216 1271 / isaackw@hrw.org.

Sincerely,



Graeme Reid
Director, LGBT Rights Program
Human Rights Watch

Annex 4: Letter to Malawi Human Rights Commission, August 17, 2017

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August 17, 2017

Malawi Human Rights Commission
Off Paul Kagame Road
Private Bag 378 Private
Lilongwe 3, Malawi

Tel: [REDACTED]

To: Mr. David Nungu
Executive Secretary

CC: Mr. Pacharo Kayira
Human Rights Section
Malawi Ministry of Justice
[REDACTED]

Re: Roadmap for implementing a public inquiry into LGBTI rights

Dear Mr. Nungu,

Human Rights Watch is writing regarding the “call for public input on the roadmap for implementing a public inquiry into LGBTI in Malawi,” published in *Malawi News* on July 29-August 4, 2017. We wish to register our concerns about the objectives of the public inquiry.

Human Rights Watch is an independent, international nongovernmental research and advocacy organization that works in more than 90 countries.

We note that the Malawi Human Rights Commission (the “Commission”) is planning to convene the public inquiry as requested by the government, through the Office of the Solicitor General, on November 7, 2016. Furthermore, we note that section 11(d) of the Malawi Human Rights Commission Act, No. 27, 1998,



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empowers the Commission to make recommendations regarding human rights issues upon request by the government.

Everyone is entitled to respect of their basic human rights, regardless of sexual orientation or gender identity. Section 20 of the 1996 Constitution of the Republic of Malawi, as amended, prohibits discrimination in any form and guarantees all persons equality before the law and equal and effective protection under the law. The rights of a minority should not be granted or withheld based on the views of the majority.

Following consideration of Malawi's initial periodic report on domestic implementation of the International Covenant on Civil and Political Rights, the United Nations Human Rights Committee (the "Committee"), in its concluding observations expressed concern about reports of violence against LGBTI people and the impact of stigma on access to healthcare services. The Committee recommended that the Malawi government establish a mechanism to monitor cases of violence and to act with due diligence to protect lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals from violence.¹⁰⁷

Following consultations with Malawian activists and representatives of human rights organizations in Malawi, including the Centre for the Development of People (CEDEP), Human Rights Watch is of the view that a public inquiry, as formulated in the call for input, risks exposing an already vulnerable minority to abuse and will inevitably lead to further violations of the human rights of LGBTI individuals. Recognizing that the protection of human rights of LGBTI persons in Malawi remains highly contentious, we urge the Commission to abandon the public inquiry. We are particularly concerned that the objectives of the public inquiry are framed in these terms: "to get views from the public that would be used to inform the national position on the controversial issue of LGBTI." It is critical that Malawi's national position on human rights not be determined by public opinion but by its legal obligations under the constitution and regional and international law.

In addition to responding to government requests, the Commission has a range of other duties, including (a) to act as a source of human rights information; (b) to assist in educating the public on, and promoting awareness and respect for, human rights; and (c) to promote more particularly the human rights of vulnerable groups. The Commission could comply with the government's request and achieve its overall objective by conducting an inquiry focused specifically on violence, abuse and discrimination faced by LGBTI individuals in Malawi. We draw your attention to Resolution 275 of the African Commission on Human and Peoples' Rights urging all African countries to:

¹⁰⁷ Human Rights Committee, concluding observations on the initial report of Malawi CCPR/C/MWI/CO/1/Add.1 para 10

end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.¹⁰⁸

We urge the Commission to be guided by international human rights norms and standards, including the above-stated resolution of the African Commission on Human and Peoples' Rights, in its work on LGBTI issues in Malawi. Should the Commission wish to create public awareness and deepen an understanding of LGBTI issues, we do not believe that a public inquiry, as presently structured, is the appropriate platform for doing so. The Commission should instead consider other processes, for instance, establishing a Committee in accordance with section 8 of the Human Rights Commission Act to increase public education and awareness premised on human rights standards.

You can reach us with your response, comments or questions through our researcher, Ms. Wendy Isaack, at +1 212 216 1271 or jsaackw@hrw.org.

Sincerely,



Graeme Reid
Director, LGBT Rights Program
Human Rights Watch

¹⁰⁸ Resolution 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity: <http://www.achpr.org/sessions/55th/resolutions/275/>

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Annex 5: Letter to Minister of Justice and Constitutional Affairs

September 26, 2018

Honorable Minister Samuel B. Tembenu SC.
Minister of Justice and Constitutional Affairs

Private Bag 333,

Capital City,

Lilongwe 3,

Malawi

Telephone: +265 1 788 411

Fax: +265 1 788 332

CC: DR. Janet L. Banda SC.
Solicitor General

Via email: justice@justice.gov.mw

Re: Human Rights Watch LGBT report

Dear Honorable Minister Tembenu

I hope this letter finds you well.

I am writing to present an advance and embargoed draft copy of our report on violence and discrimination against lesbian, gay, bisexual and transgender (LGBT) people in Malawi to be released in mid-October 2018, to provide the Ministry of Justice and Constitutional Development an opportunity to respond to our findings.

Our established practice is to submit our findings to authorities and institutions whose record is the subject of the report for their response and point of view to be reflected in the reports we publish. Human Rights Watch conducted in-depth research in Malawi in May 2018. The report, based on interviews with 45 LGBT individuals in Lilongwe and Blantyre, documents the human rights impact of criminalizing same-sex conduct in Malawi. Our research indicates that LGBT individuals face routine violence and discrimination in almost all aspects of their daily lives. Police often arbitrarily arrest and detain LGBT people and, in some cases, physically assault them. The government has also used the law to justify restrictions on freedom of association. Private individuals take advantage of the uncertain legal status of LGBT people to attack them with impunity, and health providers frequently discriminate on the grounds of sexual orientation.

In order to incorporate your response into our report, we would need to receive your written response by October 9, 2018. Please note that the report is under embargo until a release date (to be announced) in October 2018.

We look forward to receiving your response and maintaining a constructive dialogue with the Ministry of Justice and Constitutional Affairs on the recommendations set out in the report.

Sincerely,

A handwritten signature in blue ink that reads "Graeme Reid".

Graeme Reid
Director
Lesbian, Gay, Bisexual and Transgender Rights Program
Human Rights Watch

Annex 6: Letter to Minister of Health and Population

Kenneth Roth, *Executive Director*

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Amy Towers
Peter Visser
Marie Warburg
Catherine Zennström

September 26, 2018

Honorable Atupele Austin Muluzi
Minister of Health and Population
Private Bag 331,
Lilongwe 3
Malawi
Telephone:

Via email:

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arbitrarily arrest and detain LGBT people and, in some cases, physically assault them. The government has also used the law to justify restrictions on freedom of association. Private individuals take advantage of the uncertain legal status of LGBT people to attack them with impunity, and health providers frequently discriminate on the grounds of sexual orientation.

In order to incorporate your response into our report, we would need to receive your written response by October 9, 2018. Please note that the report is under embargo until a release date (to be announced) in October 2018.

We look forward to receiving your response and maintaining a constructive dialogue with the Ministry of Health and Population on the recommendations set out in the report.

Sincerely,

A handwritten signature in blue ink that reads "Graeme Reid".

Graeme Reid
Director
Lesbian, Gay, Bisexual and Transgender Rights Program
Human Rights Watch

Annex 7: Letter to Minister of Home Affairs and Internal Security

Kenneth Roth, *Executive Director*

Deputy Executive Directors

Michele Alexander, *Development and Global Initiatives*
Nicholas Dawes, *Media*
Iain Levine, *Program*
Chuck Lustig, *Operations*
Bruno Stagno Ugarte, *Advocacy*
Emma Daly, *Communications Director*
Dinah PoKempner, *General Counsel*
James Ross, *Legal and Policy Director*

Division and Program Directors

Brad Adams, *Asia*
Daniel Bekele, *Africa*
Maria McFarland Sánchez-Moreno, *United States*
Alison Parker, *United States*
José Miguel Vivanco, *Americas*
Sarah Leah Whitson, *Middle East and North Africa*
Hugh Williamson, *Europe and Central Asia*
Shantha Rau Barriga, *Disability Rights*
Peter Bouckaert, *Emergencies*
Zama Coursen-Neff, *Children's Rights*
Richard Dicker, *International Justice*
Bill Frelick, *Refugees' Rights*
Arvind Ganesan, *Business and Human Rights*
Liesel Gertholtz, *Women's Rights*
Steve Goose, *Arms*
Diederik Lohman, *acting, Health and Human Rights*
Graeme Reid, *Lesbian, Gay, Bisexual, and Transgender Rights*

Advocacy Directors

Maria Laura Canineu, *Brazil*
Louis Charbonneau, *United Nations, New York*
Kanae Doi, *Japan*
John Fisher, *United Nations, Geneva*
Meenakshi Ganguly, *South Asia*
Bénédictine Jeannerod, *France*
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Donna Slaughter
Siri Stolt-Nielsen
Darian W. Swig
Makoto Takano
John R. Taylor
Amy Towers
Peter Visser
Marie Warburg
Catherine Zennström

September 26, 2018

Honorable Cecilia Chazama
Minister of Home Affairs and Internal Security
Private Bag 331,
Lilongwe 3
Malawi
Telephone: +265 1 789177

Via email:

Re: Human Rights Watch LGBT report

Dear Honorable Minister Cecilia Chazama

I hope this letter finds you well.

I am writing to present an advance and embargoed draft copy of our report on violence and discrimination against lesbian, gay, bisexual and transgender (LGBT) people in Malawi to be released in mid-October 2018, to provide the Ministry of Justice and Constitutional Development an opportunity to respond to our findings.

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Sincerely,

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Graeme Reid
Director
Lesbian, Gay, Bisexual and Transgender Rights Program
Human Rights Watch

Annex 8: Letter to Malawi Human Rights Commission

Kenneth Roth, *Executive Director*

Deputy Executive Directors

Michele Alexander, *Development and Global Initiatives*
Nicholas Dawes, *Media*
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Neil Rimer
Graham Robeson
Shelley Frost Rubin
Kevin P. Ryan
Ambassador Robin Sanders
Bruce Simpson
Donna Slaight
Siri Stolt-Nielsen
Darian W. Swig
Makoto Takano
John R. Taylor
Amy Towers
Peter Visser
Marie Warburg
Catherine Zennström

September 26, 2018

Mr. David Nungu
Executive Director
Malawi Human Rights Commission
Off Paul Kagame Road
Private Bag 378
Lilongwe 3,
Malawi.
Telephone: +265 1750 900958

Via email: 

Re: Human Rights Watch LGBT report

Dear Mr. Nungu,

I hope this letter finds you well.

I am writing to present an advance and embargoed draft copy of our report on violence and discrimination against lesbian, gay, bisexual and transgender (LGBT) people in Malawi to be released in mid-October 2018, to provide the Ministry of Justice and Constitutional Development an opportunity to respond to our findings.

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Graeme Reid
Director
Lesbian, Gay, Bisexual and Transgender Rights Program
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