



Refugee Documentation Centre (Ireland)  
LEGAL AID BOARD

## Malawi - Researched and compiled by the Refugee Documentation Centre of Ireland on Tuesday 3 September 2013

### Information on the legal status of homosexuality including applicable penalties

In November 2012 *BBC News* states:

“Malawi has suspended laws against same-sex relationships pending a decision on whether to repeal the legislation, the justice minister has said” (BBC News (5 November 2012) *Malawi suspends laws against homosexual relationships*).

This document also notes that:

“At present, homosexual acts carry a maximum sentence of 14 years in jail” (ibid).

A report published in November 2012 by *Amnesty International* states:

“Today’s statement by Malawi’s Justice Minister that laws criminalising same sex sexual conduct are suspended pending a decision on whether or not to repeal them is a historic step in the fight against discrimination in the country. Justice Minister Ralph Kasambara said he wanted debate on the issue before parliament decides whether to keep the laws or not” (Amnesty International (5 November 2012) *Suspension of anti-homosexuality laws in Malawi a historic step forward*).

This document also points out that:

“Sections 153 and 156 of Malawi’s Penal Code criminalize same sex sexual conduct between men and those convicted face up to 14 years imprisonment, with or without corporal punishment. Section 137A of Malawi’s Penal Code criminalizes “indecent practices between females,” with anyone found guilty liable to a prison term of five years” (ibid).

A report published in June 2013 by the *International Lesbian Gay Bisexual Trans and Intersex Association* lists legislation noting the:

“Penal Code Cap. 7:01 Laws of Malawi 182

“Section 153 Unnatural offences Anyone who – (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of any animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature, shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.”

“Section 154. Attempt to commit unnatural offences Any person who attempts to commit any of the offences specified in the last preceding section shall be guilty of a felony and shall be liable to imprisonment for seven years, with or without corporal punishment.”

“Section 156 Indecent practices between males Any male person 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.” “ (International Lesbian Gay Bisexual Trans and Intersex Association (26 June 2013) *State-Sponsored Homophobia – May 2013*, p.52).

In May 2013 *Freedom House* states:

“Consensual sexual activity between same-sex couples is illegal and is punishable with up to 14 years in prison” (Freedom House (20 May 2013) *Freedom in the World 2013 - Malawi*).

A publication released in April 2013 by the *United States Department of State* reviewing events of 2012 points out that:

“Consensual same-sex sexual activity is illegal and is punishable by up to 14 years in prison in addition to corporal punishment, including hard labor. The penal code outlaws “unnatural offenses” and “indecent practices between males.” Same-sex activity can also be prosecuted as “conduct likely to cause a breach of the peace.” A 2011 amendment to the penal code codifies the illegality of consensual same-sex sexual activity between women, setting a maximum prison term of five years for convicted offenders” (United States Department of State (19 April 2013) *Country Reports on Human Rights Practices for 2012/Malawi*, Section 6 Discrimination, Societal Abuses, and Trafficking in Persons/Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity).

An *Amnesty International* report issued in June 2013 notes:

“Currently the maximum penalty for same-sex conduct in Malawi is 14 years imprisonment for men with or without corporal punishment and five years for women” (Amnesty International (25 June 2013) *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa*, p.18).

## References

Amnesty International (25 June 2013) *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa*

<https://www.amnesty.org/en/library/asset/AFR01/001/2013/en/9f2d91b7-bc0e-4ea7-adae-7e51ae0ce36f/afr010012013en.pdf>

Attachment not included due to IT limitations

Accessed Tuesday 3 September 2013

Amnesty International (5 November 2012) *Suspension of anti-homosexuality laws in Malawi a historic step forward*

<http://www.amnesty.org/en/news/suspension-anti-homosexuality-laws-malawi-historic-step-forward-2012-11-05>

Accessed Tuesday 3 September 2013

BBC News (5 November 2012) *Malawi suspends laws against homosexual relationships*

<http://www.bbc.co.uk/news/world-africa-20209802>

Accessed Tuesday 3 September 2013

Freedom House (20 May 2013) *Freedom in the World 2013 - Malawi*

<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=printdoc&docid=51a316fb18>

Accessed Tuesday 3 September 2013

International Lesbian Gay Bisexual Trans and Intersex Association (26 June 2013)

*State-Sponsored Homophobia – May 2013*

[http://old.ilga.org/Statehomophobia/ILGA\\_State\\_Sponsored\\_Homophobia\\_2013.pdf](http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2013.pdf)

Attachment not included due to IT limitations

Accessed Tuesday 3 September 2013

United States Department of State (19 April 2013) *Country Reports on Human Rights Practices for 2012/Malawi*

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

Accessed Tuesday 3 September 2013

This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

#### Sources Consulted

Amnesty International

BBC News

Electronic Immigration Network

European Country of Origin Information Network

Freedom House

Google

Human Rights Watch

Immigration and Refugee Board of Canada

Internal Displacement Monitoring Centre

International Crisis Group

IRIN News

Lexis Nexis

Minority Rights Group International

Online Newspapers

Refugee Documentation Centre E-Library

Refugee Documentation Centre Query Database

Reliefweb

Reuters

United Kingdom Home Office

United States Department of State

UNHCR Refworld