A review of the role of Malawi's law reform agency in criminalization and decriminalization of female same-sex sexual conduct

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ABSTRACT

The Law Commission is an institution created by Malawi's 1995 Constitution with the mandate to review and recommend laws to be in conformity with the Constitution and international law. In 2000, the Commission recommended, for the first time in the history of Malawi, the criminalization of female same-sex sexual conduct. This was enacted into law in 2011. This article examines the role of the Commission in influencing the development of sex- and gender-related laws to address gender inequality and discrimination. It describes the historical context of legal developments since colonial times, leading to the adoption of a democratic constitution and commitment to incorporating human rights norms and standards in national laws. It argues that, in contradiction to its mandate, the Commission played an influential role in the development of a law that further marginalizes women and entrenches sex discrimination. It concludes that the Commission should therefore take responsibility for its actions and review the offending law *sua sponte*.

Key words

Malawi Law Commission, CEDAW, Constitution of Malawi, female homosexuality, sex discrimination, gross indecency

Introduction

On May 14, 1891, the land occupied by Malawi was declared a British protectorate under the name of British Central Africa, effectively formalizing the beginning of British colonial rule that was to extend until Malawi declared its independence from Britain on July 6, 1964. Between 1891 and 1902, Britain established a relationship of direct rule with its colony. In 1902, a new British-Order-in-Council, widely regarded as Malawi's first constitution, established an embryonic colonial administration (Chigawa 2006). Further developments in 1907 led to the adoption of the Nyasaland-Order-in-Council (and the change in name from British Central Africa to Nyasaland) that enhanced colonial administration governance structures. It is during colonialism that Malawi received its criminal code, the 1930 Penal Code (Penal Code), which largely derived from English common law

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and codified criminal law, drafted and adapted for the colonized state by the Colonial Office (Morris 1974).

After attaining independence in 1964, Malawi adopted a Constitution that included a bill of rights that guaranteed a comprehensive set of human rights. However, in 1966, when Malawi became a republic, with Dr. Kamuzu Banda as its first president, a Constitution was adopted that rejected the bill of rights (Chirwa 2011). Following the transition into multiparty democracy in 1994, Malawi adopted a new Constitution in 1995 that brought back the bill of rights that had been excluded in the 1966 Constitution (Mutharika 1996, p. 205). This signalled Malawi's return to recognizing human rights as the fundamental basis for democratic governance. To support the newly affirmed democratic values, the Constitution created several institutions to play various roles in promoting human rights, including a law reform agency, the Law Commission (Commission). This article analyzes the role of the Commission in influencing the government to enact a law in 2011 to criminalize same-sex sexual conduct between women. It briefly historicizes the legal development of anti-homosexuality law in Malawi and examines the motive and unique role of the Commission in the 2011 reforms. It explains why the criminalization of female same-sex sexual conduct entrenches a discriminatory law that potentially threatens the rights of girls and women. It argues that the Commission should, on its own motion and in accordance with its mandate to promote laws that are in conformity with constitutional values, review the anti-homosexuality law.

A historical perspective of anti-homosexuality law

The criminalization of same-sex sexual intimacy in Malawi is a legacy of British colonialism (Han and O'Mahoney 2014) that survives to this day through the Penal Code. The regulation of homosexual conduct in nineteenth-century Britain, which took the form of criminalization of male homosexual conduct, reflected a long tradition in the West of hostility toward homosexuality (Weeks 2012). English legislation created the offense(s) of sex against the order of nature, otherwise known as buggery and sodomy, which later appeared in colonial penal and criminal codes.[1] In 1885, the English Parliament introduced the offense of gross indecency in Section 11 of the 1885 Criminal Law Amendment Act (known as the Labouchère Amendment) to criminalize all male homosexual acts short of penetrative acts, whether in public or in private (Weeks 1977, p. 14). The Labouchère Amendment found its way into Malawi's criminal law through Section 156 of the Penal Code, which states 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.

However, gross indecency acts between women were not criminalized in Malawi until the amendment proposed by the Commission was enacted in 2011. While criminalization of same-sex sexual conduct between males was a colonial inheritance, the extension to women is the provenance of the democratic dispensation in which the Commission played a crucial role. Malawi's review of the Penal Code to criminalize female-to-female sexuality raises several questions. Why was sexual intimacy between females not criminalized before? Why did Malawi decide to criminalize females now? What is the significance of this legal development?

Historically, criminalization of female-to-female intimacy did not feature in English criminal law. In 1921, there had been an attempt, in England, to introduce provisions to criminalize lesbianism, but these failed because of the fear that this could raise public attention to female homosexuality that was imagined to be relatively unknown (Weeks 2012, p. 131). The reason behind the invisibility had to do with women's subjugated position in society, and the associated views that women's sexuality was passive and non-autonomous (Law 1988; Dunphy 2000). Therefore, whereas male homosexual subculture had found a voice and consolidated its political position, the female homosexual remained invisible (Weeks 1977, p. 87). In fact the first articulations of female homosexuality in English literature were by men and not women, and these authors generally portrayed female homosexuality in a negative light (Weeks 1977, p. 87).

A further explanation of the failure to criminalize female homosexual conduct was that the criminalization of male homosexuality served its purpose to regulate sexual behavior of both men and women, even if women's behavior was not formally criminalized. Stigmatizing male homosexuality reinforces notions of hegemonic masculinities that subordinate homosexual men, but also women (Koppelman 1994). The taboo around homosexuality is deployed to maintain traditional and stereotypical sex roles regarding male sexual superiority. These hegemonic notions of masculinities are threatened by the homosexual, especially the male homosexual (Tamale 2007; Msibi 2011). While lesbianism is constructed as insubordination to male sexual superiority, it is male homosexuality that is most feared as compromising the social order, and therefore deserving of criminal regulation. Female homosexuals remained unrecognized, which also meant that they were deprived of political power.

These gender stereotypical meanings of female sexuality originating from the West influenced how white colonists viewed African sexualities. "Colonial constructions of sexuality in Africa never recognized African

women as having respectable sexuality with legitimate sexual desires" (wa Tushabe 2017, p. 176). Yet, same-sex intimacies, including among women, have always been part of the life and experience of African peoples (Murry and Roscoe 1998), and in Malawi (Xaba and Biruk 2016), albeit not always under the Western identity labels of LGBTIQ (Holland et al. 1994; Kendall 1998). Wa Tushabe describes how, through colonial sex and gender laws, colonialism introduced foreign knowledge systems that served to make invisible and render alien not only female-to-female sexual experiences, but also African sexual experiences in general. Indeed, the introduction of criminalization of female-to-female same-sex intimacy in Malawi serves to extend such a colonial knowledge system couched in the language of "gross indecency" to illegitimate female-to-female sexual energies and desire, thereby eroding women's erotic autonomy (Holland et al. 1994).

The inheritance of colonial anti-homosexual law, even if it has contributed to shaping social relationships, is however not determinative of the meanings that homosexuality has taken on in Malawi. In other words, that Malawi has maintained criminalization of homosexual conduct and further extended it to female homosexual conduct was certainly influenced by colonialism, but it was not necessarily the cause. Rather, Malawi has shaped its inheritance, and constructed social meanings of homosexuality that are recognizably culturally specific. Malawi has chosen to recognize the female homosexual in law only to demean her, reflecting the social position of women in Malawi society. The Commission played an important role in shaping the social response to homosexuality and in repositioning the place of women homosexuals.

The role of the Law Commission

The Commission is a constitutional body created under Section 132 of the Constitution. Its powers are stipulated under Section 135 and these include "to review and make recommendations regarding any matter pertaining to the laws of Malawi and their *conformity with this Constitution and applicable international law* (emphasis added)" (Constitution of Malawi 1995). The Commission can receive submissions from any person or body regarding the laws of Malawi. The Commission reports to the Minister of Justice and Constitutional Affairs (herein Minister), who eventually submits the Commission's report and recommendations for law reform to Parliament. Section 136 of the Constitution confers on the Commission the autonomy to act independently of any other authority, ensuring its independence from any external influence.

In 1994, when Malawi had just transitioned from a one-party autocracy to multiparty democracy, the Malawi Government undertook a project to

reform the criminal justice system. It is out of this initiative that the Commission was tasked with the review of several statutes related to criminal justice, including the Penal Code. The aim of the review was to align criminal justice laws with the new constitutional order. In its report on the review of the criminal justice laws (Malawi Law Commission 2000), the Commission reiterated that:

> [T]he reform of our laws is necessary to ensure conformity with the Constitution, to resolve contradictions between existing laws, to ensure that the law was appropriate for a modern pluralistic democracy and to provide for a system of justice … which reflects the needs of special interest groups, as well as those of the vulnerable groups of people, and which also reflects gender concerns and cultural norms and values. (p. 1)

Ironically, it is in this spirit that the Commission, in 2000, recommended an amendment to the Penal Code to extend the criminalization of same-sex sexual conduct to females. The Commission had felt the need "to introduce new offences to punish new forms and ways that have emerged of committing certain crimes" (Malawi Law Commission 2000, p. 8), including sexual offenses. Upon reviewing the Penal Code, one anomaly identified by the Commission was that females were not criminalized under the offense of gross indecency under Section 156, which only targeted males. Realizing that "female persons are equally capable of engaging in acts of indecency among themselves" (Malawi Law Commission 2000, p. 39), the Commission recommended an amendment to include females, supposedly to ensure legal equality. It proposed the introduction of Section 137A to the Penal Code to provide that:

> Any female person who, whether in public or private, commits any act of gross indecency with another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, shall be guilty of an offence and shall be liable to imprisonment for five years.

In the thinking of the Commission, legal equality would be satisfied by treating homosexual women and men alike, even if it meant treating them equally badly. However, it has become widely accepted in equality jurisprudence that equality should be understood to mean substantive equality, rather than merely treating similarly situated persons alike (Fredman 2011). An important consideration should be the impact of the law on the persons to whom it applies. It has been stated by Lord Justice Ward as follows: "Equality means that our society cannot tolerate legislative distinctions that treat certain people as second-class citizens, that demean them, that treat them as less capable for no good reason, or that otherwise offend fundamental human dignity."[2]

The Commission failed to appreciate that, despite equalizing the status of homosexual men and women before the anti-homosexual law, this is a law that creates or maintains a distinction that is discriminatory in its effect and erodes the dignity of homosexual persons. For this reason, it is argued here that the Commission overstepped its mandate, which is to ensure that laws are in conformity with constitutional principles and international law, precisely because anti-homosexuality laws reinforce inequality between the sexes, and not only subordinates gays and lesbians, but all women (Hunter 2001).

Further developments took place in Malawi between 2001 and 2011, led by the Commission to reform gender- (and sex-) related laws. In 2001, a Special Law Commission on Gender and the Law was empanelled to review gender-related laws to align them with Malawi government's policy to promote gender equality and empowerment of women. In its conceptual note, the Special Law Commission stated that its aim was to "have laws that are gender responsive to help eliminate such injustices as unequal gender relations that disadvantage women and girls" (Malawi Law Commission 2003, p. 5). It also stated several strategic principles of women's rights, including identification and elimination of discrimination against women, which would involve "the assessment and analysis of legal, social and other norms and practices and effectively eliminate them to promote gender equality" (Malawi Law Commission 2003, p. 5). In 2011, the Commission proposed the Gender Equality Bill[3] and the Commission recognized the centrality of the Convention on the Elimination of all Forms of Discrimination Against Women (herein CEDAW) as the basis for addressing discrimination against women that is most times influenced by culture and traditions that shape gender roles for men and women and family relations (Malawi Law Commission 2011). Surprisingly, within the same period, the Commission maintained its recommendation to criminalize female homosexuality.

There is no evidence of a concerted challenge to the Commission's recommendation to criminalize female homosexual conduct, even though the Commission provided an opportunity for input by interest groups through a public consultation. The Commission held consultations with various groups and presented its recommendations to stakeholders at a consultative workshop before finalizing and submitting its report and recommendations to the Minister. Regardless of whose idea it was from the interest groups (including the Commission itself), the Commission was the final architect of the recommendation sanctioned at the consultative workshop. This workshop had brought together stakeholders, including sectors of the public service, such as the Ministry responsible for women and children affairs, the Judiciary, the Malawi Law Society, and civil society organizations, including human rights organizations and women's groups (Malawi Law Commission 2000, pp. 7–8). Ultimately, the responsibility rested with the

Commission to ensure that any proposition taken on board was in conformity with constitutional values and international human rights standards.

The extraordinary influence of the Law Commission

A constellation of factors rendered rather extraordinary the influence of the Law Commission in enacting the amendment. The first observation is that the voice of girls and women on an amendment that potentially adversely affected them, directly or indirectly, was muted. The female homosexual was not visible and remained marginal to the whole process of creating a law to criminalize her sexuality. Interestingly, the Commission's report portrays an untroubled consensus at the public consultations and consultative workshop, considering that the stakeholders included human rights and women's groups.

Second, the law was passed by Parliament without much scrutiny from the members of Parliament. A review of the parliamentary debates on the Penal Code Amendment Bill no. 17 of 2009 containing the proposed amendment reveals that no parliamentarian questioned the rationale for criminalizing female-to-female sexuality. The specific recommendation to criminalize female-to-female sex was only scantily touched on during the three days in which the bill was debated. The issue that preoccupied the few parliamentarians who raised concerns about the gross indecency provision, and was never adequately addressed by the responsible Minister, was that the meaning of "indecency" was overly broad.[4]

Third, the Commission's recommendation never attracted any serious resistance from the citizenry. One explanation is that this is a taboo topic concerning women and girls who are marginalized not only in the wider society, but also in women's rights and LGBTI rights groups. There are a few prominent LGBTI groups in Malawi led by men that have championed LGBTI rights generally. However, it should not be assumed that such LGBTI rights groups would always articulate LGBTI rights in a way that also challenges the marginalization of women. Similarly, women's rights groups do not automatically include sexual orientation rights in their advocacy (Auchmuty, Jeffreys, and Miller 1992). Indeed, even at the international level, the International Women's Rights Action Watch Asia Pacific (2007) observed that the CEDAW Committee has not been engaged as much as it could by the women's rights movement to address discrimination against women because of sexual orientation. This is also true in the case of Malawi. In the 2015 joint shadow report to the Committee on CEDAW compiled by CSO's working on LGBTI and women's rights in Malawi, the issue of discrimination of women based on sexual orientation

was only cursorily addressed. In a relatively short paragraph on the subject matter, the report merely stated that "The State Party has not taken any positive steps to decriminalize same-sex relations between consenting adults" (WLSA-Malawi and University of Malawi 2015). Civil society thus failed to utilize the opportunity to present the issue of sex discrimination in the recent legal developments more persuasively and convincingly before the Committee on CEDAW.

The factors discussed above created circumstances in which the Commission's role assumed a certain extraordinariness. Even if the Commission would argue that the process was democratic, the circumstances were such that the Commission constituted that small group whose intense preferences determined the outcome of a "democratic decision-making" (Koppelman 1994, p. 250) on the question of enhancing the criminalization of homosexuality. The Commission, almost single-handedly, orchestrated the enactment of a law whose conformity to constitutional and international human rights standards is at best questionable.

Critique of the criminalization of sexual conduct between women

It is against the mandate of the Commission to ensure conformity of laws with the Constitution and international law that its recommendation to criminalize female-to-female sexual conduct must be evaluated. The focus of this article on criminalization of women is not to suggest a disregard of the criminalization of men, nor to pit one against the other. While the spirit of this article is to argue for decriminalization of anti-homosexuality laws because they serve sexist aims, it uses the event of criminalizing women as a hinge for a critique on the role of the Commission in shaping the meaning of homosexuality.

According to the Constitution, Malawi shall promote the welfare and development of the people of Malawi by progressively adopting policies and legislation, among other goals, to achieve gender equality, as described in Principle of National Policy 13 of the Constitution in the following terms:

> To obtain gender equality for women with men through full participation of women in all spheres of Malawian society on the basis of equality with men; the implementation of the principles of non-discrimination and such other measures as may be required … .

Section 24 of the Constitution recognizes the rights of women, the first part of which states that "Women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender … ." Gender-related law reform in Malawi has been inspired by the Constitution, both its women-specific provisions and recognition of various rights under Chapter IV, including liberty, human dignity,

equality and privacy, but also Malawi's obligations under international law. Indeed, since 2001, Malawi has progressively developed its laws to advance gender equality and women's rights.

The Commission has recognized that the Constitution of Malawi captures the spirit of CEDAW and other relevant international legal instruments to advance non-discrimination. Koppelman and Hunter, cited abvoe, have argued that when a law allows a man to have consensual sexual conduct with a woman but criminalizes a woman for engaging in the exact same act with a fellow woman, it creates a distinction based on sex, and for no good reason save that some segment of the society has different views about sexuality.

In the Commission's own words, gender equality should mean that "both men and women are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles and prejudices" (Malawi Law Commission 2011, p. 12). The Commission has also recognized that women are not a homogenous group, but that:

> They come from many different cultures, races and faiths; they occupy different class and economic positions; they have *different sexualities*; they may be able-bodied or with disabilities; they may be married or single; they may be prisoners; and they vary in ages [emphasis added]. (Malawi Law Commission 2011, p. 14)

The Commission has acknowledged that it is not enough to recognize that women, as a category, are discriminated against, but to also recognize intersectional discrimination because women are different and positioned differently in society. The Commission was sensitive to the fact that "different sexualities" could be grounds for discrimination against women. Indeed, homosexual women experience unique forms of harm because of the intersection between gender and sexual orientation (Human Dignity Trust 2016).

In proposing a law that threatens the rights of girls and women, the Commission ought to have taken due care and undertaken a careful analysis of the impact of its proposition, especially because women have historically been marginalized. In fact, the reason the drafters of the Constitution included Section 24 was to address women's historical marginalization. A peer law reform agency in Australia had recognized, within the same time that the Commission embarked on the criminal justice reform, that equality in law "needs to be understood in a different and more substantial sense than merely equality before the law. Any understanding of equality must take account of the social and historical disadvantages of women and how that has affected the law" (Australian Law Reform Commission 1994).

The invisibility of female homosexuals in criminal law was not because society thought kindly of them. On the contrary, it was because they did not matter. Their sexuality did not matter. This is the reason that the voice of homosexual women did not appear at any point in the Commission's

report. They were not recognized. Politically, they were nothing, except as objects cited for criminalization. However, homosexual women have always been present in Malawi (Xaba and Biruk 2016).

The taboo around homosexuality has always operated to harm women. It was reported in the media that a Member of Parliament had a woman expelled from her constituency because she was suspected of being a lesbian (Panapress 2010). The mere suspicion that the woman was a lesbian triggered the violation of her constitutionally recognized rights. The media also reported the case of girls who were expelled from school because they had a sexually intimate relationship (Tembo 2014). These reports, though anecdotal, are indicative of ongoing discrimination against girls and women because of sexual orientation. The Penal Code amendment only served to validate societal discriminatory attitudes and practices towards the group targeted by the law. The Commission's recommendation to criminalize female-to-female sexuality is therefore significant because of its constitutive effect (Waites 2005). Even if relatively few women and girls may be prosecuted under this law (at the time of writing this article, an inquiry into whether any girl or woman has been prosecuted under the law yielded nothing), it nevertheless sends a clear signal to society that homosexuals should be treated with disdain. The Commission's recommendation confirmed socially acceptable negative views about women and their sexuality.

Resolving the contradiction in sex and gender laws

At the time the Commission made its proposal, there were a host of available international sources of human rights law and principles to which the Commission had recourse. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) that Malawi acceded to on March 12, 1987, is highlighted because it was negotiated specifically to address discrimination against women. Article 1 of CEDAW sets the standard of the Convention:

> For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Despite the cautious nature with which the Committee on CEDAW has approached the interpretation of discrimination on the basis of sex to include sexual orientation, it has been argued by Byrnes (2012) that "[t]here is, in principle, no reason why the Convention should not be applied to provide protection for women who are discriminated against

because of their sexuality" (p. 64). Even if CEDAW does not expressly mention sexual orientation, it does apply to women's sexuality as long as the discriminatory impact can be demonstrated, such as where sexuality has been used to subordinate women and reinforce male superiority (International Women's Rights Action Watch Asia Pacific 2007).

Holtmaat and Post (2015) persuasively argue that the Convention's coverage of women's oppression related to sexuality can be discerned from CEDAW's three objectives which are: "(a) to realise full legal equality between men and women; (b) to enhance de facto equality of women; and (c) to take away the cultural and social roots of gender inequality" (p. 324). They maintain that the third objective is expressed by Articles 2f and 5a of CEDAW and obligates states to address gender roles and stereotypes that form the basis of discrimination against women, including the alienation of women from female-to-female sexuality. States have the obligation to address systemic and structural discrimination against women, such as violation of the rights of women who engage in same-sex sexual conduct, which is based on sexual and gender stereotypes (Cook and Cusack 2010).

Apart from CEDAW, the Convention on the Rights of the Child is also highlighted in this article because anti-homosexual laws have implications on the emotional and psychological development of adolescents (Kowen and Davis 2006). Article 2 of the CRC prohibits discrimination of any kind against children:

> States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

In General Comment No. 3, the Committee on the Rights of the Child expressed that: "Of particular concern is gender-based discrimination combined with taboos or negative or judgemental attitudes to sexual activity of girls … . Of concern also is discrimination based on sexual orientation." In General Comment No. 4, the Committee affirms that the prohibited grounds for discrimination referred to in Article 2 of the CRC "also cover adolescents' sexual orientation." In General Comment No. 20, the Committee notes that LGBTI youth, such as lesbians, face stigmatization and criminalization in education and training. UNESCO (2016) has documented homophobic discrimination and violence against sex and gender non-conforming adolescents in schools. The report revealed that countries do not gather comprehensive data on homophobic violence in schools, and this contributes to muting the voice of these adolescents.

CEDAW and other human rights treaties, such as the Protocol to the African Charter on People's and Human Rights on the Rights of Women

in Africa, do not explicitly include sexual orientation as prohibited grounds for discrimination. The Commission, therefore, might not have considered its recommendation to criminalize female homosexual conduct as problematic, because the Constitution and international law do not expressly prohibit discrimination on this ground. Nevertheless, the Commission should have considered the impact of the law on dignity female homosexual persons. Therefore, by advising the government to criminalize female-to-female sexuality, the Commission had, in the least, acted imprudently.

As it has been argued above, the Commission was ultimately responsible for enhancing anti-homosexuality law by extending criminalization to females. It is for this reason that this author looks to the same Commission and invites it to initiate the review of Section 137A, and with it, Section 156, *sua sponte*. The Commission should not wait for interest groups to challenge this discriminatory law. Indeed, the Commission should review the discriminatory law it had itself recommended in 2000. The Commission should not ignore the fact that the law it proposed continues to pose a threat to the rights of girls and women every day by exposing them to homophobic ridicule, discrimination, and violence (Xaba and Biruk 2016). The opportunity for the Commission to review the oppressive law in accordance with its mandate is glaringly ever-present.

Conclusion

The criminalization of consensual sexual conduct between girls or women interferes with their way of being and has material effects on girls and women and not only lesbians. Such a law entrenches sexist norms, is unconstitutional, and goes against international human rights standards. However, it is not a situation from which Malawi, and the Commission, cannot recover. This author therefore encourages the Commission to use its powers ethically, and on its own initiative review the anti-homosexuality law. Taking the step to reverse the oppressive and discriminatory law would not only be a measure of the Commission's integrity, but would remove a glaring contradiction in Malawi's efforts to ensure that sex- and gender-related laws are in conformity with the Constitution and international law. Most importantly, the review process should ensure equality of participation of female homosexuals, among other stakeholders, which is an important aspect of substantive equality.

Notes

1. Section 152 of the Malawi Penal Code criminalizes carnal knowledge of any person against the order of nature.
2. *Fitzpatrick v. Sterling Housing Association Ltd.* (1997), 4 All ER 991.

3. The Gender Equality Act was passed by Parliament, enacted into law, and become enforceable in 2013.
4. Hansard Parliamentary Debates, November 17, 2010; Hansard Parliamentary Debates, November 18, 2010; Hansard Parliamentary Debates, November 19, 2010.

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