

**Universal Periodic Review of Malawi**  
**50th Session**  
**Joint submission by:**



**African Sex Workers Alliance**

The African Sex Workers Alliance (ASWA) is the Pan African alliance of sex worker-led organization's formed in 2009 with membership from 37 countries. The organization's mission is to amplify the voices of sex workers as well as advocate for the health and human rights of the diverse community of sex workers working and living in Africa.

Address: Mukima Drive Gate 78; Room 5, P.O Box 5986-00200 Nairobi, Kenya.

**Email:** [Admin@aswaalliance.org](mailto:Admin@aswaalliance.org) [Nyarath@aswaalliance.org](mailto:Nyarath@aswaalliance.org)

**Community Health Rights Advocacy (CHeRA)** is a male sex worker-led organization registered with the Malawi Government as both a company limited by guarantee and a local NGO. Founded in 2016 following the Sex Worker Academy in Nairobi, CHeRA emerged from the Malawi Sex Workers Alliance when members identified the need for a platform addressing the specific challenges of male sex workers.

CHeRA's focus on health rights advocacy, particularly HIV prevention, stems from its founding members' lived experiences as sex workers living with HIV. The organization recognizes addressing the high HIV risk among male sex workers as essential for Malawi to achieve global targets of ending HIV transmission by 2030.

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**Sexual Rights Initiative**

The Sexual Rights Initiative is a coalition of national and regional organisations based in Canada, India, Egypt, and Argentina that work together to advance human rights related to gender and sexuality at the United Nations.

**Contact:** Anthea Taderera, Advocacy Advisor – UPR,

**E-mail:** [anthea@srigenewa.org](mailto:anthea@srigenewa.org) **Tel:** +41767656477,

**Website:** [www.sexualrightsinitiative.org](http://www.sexualrightsinitiative.org)

Address: Rue de Monthoux 25, Geneva, 1201 Switzerland

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## Introduction

1. The legal, policy, social and economic conditions for sex workers in Malawi remain challenging and without improvement in the years since the last UPR. Many of the specific challenges raised by sex worker advocates during Malawi's last UPR remain the same. Despite highlighting these in the last review, Malawi did not receive any recommendations that directly addressed sex workers rights violations.
2. The criminalisation of some aspects of sex work and the widespread lack of clarity about the legal status of sex work leads to high levels of violence and discrimination against sex workers by state and non-state actors, an almost complete impunity for perpetrators of this violence and discrimination and lack of support, redress and justice for survivors of violence. Male sex workers are additionally targeted by state and non-state actors based on the legal status of same sex conduct which is criminalised in Malawi.
3. Sex workers also face significant barriers in accessing health care services - including sexual and reproductive health services and information. Sex workers are subjected to psychological and physical acts of violence by healthcare workers and others employed at healthcare facilities. There have been documented cases of healthcare workers reporting gay men and trans\* sex workers to the police. The experiences of discrimination and violence, and fear thereof, leads to sex workers not having access to information and services and has a detrimental impact on their health.
4. Female sex workers and men who have sex with men are listed as key populations that require specific programs and responses. Both groups show a higher prevalence rate than the general population in Malawi. UNAIDS reports the HIV prevalence rate among sex workers to be 49.9% (2020) There is no specific data available on the HIV prevalence among male sex workers, as the HIV prevalence rate among these individuals is reflected under the MSM population (12.9 % in 2020). Sex workers are at increased exposure to HIV transmission as a result of the high levels of sexual violence they are exposed to, lack of information about HIV prevention and lack of access to HIV prevention methods among other factors. In addition, sex workers who are on HIV treatment may default on treatment because of frequent arrests and detention during which time they are unable to take their treatment.
5. The ongoing harassment, violence and precarious working conditions of sex workers also have a negative impact on their mental health and wellbeing with high rates of depression and post traumatic stress disorder being reported.
6. This report puts forward a number of recommendations on decriminalising all aspects on adult sex work and the amendment of other laws used to harass and exploit sex workers; improving the health outcomes of sex workers by strengthening health systems and health service delivery; improving access to information and training for sex workers, and rights based training for health care workers, police and other state actors in the criminal justice system.
7. As Malawi approaches its fourth UPR cycle, CHeRA brings valuable evidence regarding the lived realities of male sex workers, emphasizing that protecting marginalized populations strengthens Malawi's constitutional values of dignity and equality. This is CHeRA's third engagement with the UPR process, having previously collaborated on reporting on the third

cycle, and engaged in mid-term reporting of Malawi's implementation of second-cycle recommendations alongside other LGBTIQ+ organizations, documenting minimal progress on decriminalization and persistent healthcare barriers.

8. Despite being a signatory to a number of international human rights instruments such as the Convention on the Elimination of Discrimination Against Women, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights, Malawi continues to undermine the rights of sex workers and of LGBT+ people in the country. This lack of progress has hindered the effective promotion and protection of human rights.

### **Impact of homophobia, transphobia and whorephobia on HIV and the right to health**

9. During the last review, Malawi received a number of recommendations pertaining to the right to health including:
  - 124.16 Increase access to and the availability of quality health services for lesbian, gay, bisexual, transgender and intersex persons (Chile);
  - 124.36 Take concrete legal and policy measures, including the provision of adequate human rights training for health personnel, to eliminate all forms of stigma and discrimination in health settings, in particular against women and girls, lesbian, gay, bisexual, transgender and intersex persons, persons affected by HIV/AIDS and persons with mental health conditions and psychosocial disabilities (Portugal);
10. Malawi has made notable progress in its HIV response over the past decade, reducing new HIV infections by 76% since 2010. The country has also advanced toward the UNAIDS 95-95-95 targets, achieving 95-91-87, reflecting improvements in diagnosing, treating, and suppressing the virus. A key factor in this progress has been the expansion of antiretroviral therapy (ART), with over 1 million people now on treatment, alongside the implementation of prevention strategies such as condom distribution, pre-exposure prophylaxis (PrEP), and drop-in centers (DICs) designed for key populations (KPs). Programs like DREAMS, supported by partnerships with PEPFAR and the Global Fund, have further bolstered efforts to address HIV among vulnerable groups, particularly adolescent girls and young women (AGYW) and KPs.
11. Malawi unfortunately noted the above recommendations, which is consistent with its generalised policy of institutionalised and structural homophobia and transphobia, which along with stigma and discrimination against sex workers, serve to undercut the country's HIV/AIDS response, and indeed the progressive realisation of the right to health. While Malawi has taken steps to improve the legal environment and provide KP-friendly services, ongoing issues such as stockouts of STI drugs, limited DIC coverage, and low PrEP uptake continue to pose barriers. Addressing these challenges is essential to ensuring equitable progress in Malawi's HIV response.
12. Significant challenges persist, especially for key populations, including female sex workers (FSWs), men who have sex with men (MSM), transgender persons (TGs), and people who inject drugs (PWID). These groups experience disproportionately high HIV prevalence rates—49.9% among FSWs, 12.8% among MSM, and 13.8% among TGs—due to widespread stigma, discrimination, and criminalization. Many KPs face harassment from law enforcement and healthcare providers, which severely limits their access to essential services and accurate health information.
13. The government is yet to adopt components of LGBTI friendly health service provision in the medical pre service training. Between 2020 and 2025, CHERA, with support from FHI360,

trained 189 healthcare workers across six priority districts in Malawi to provide LGBTIQ-friendly health services, targeting male sex workers (MSW) and other key populations (KPs). This initiative aligns with Universal Periodic Review (UPR) recommendations to ensure inclusive healthcare for marginalized groups. Additionally, PEPFAR supported separate training for 100 healthcare workers in Lilongwe district. Despite these efforts, the Government of Malawi has not independently addressed this agenda, leaving it reliant on donor funding.

14. The training addressed systemic barriers such as stigma and discrimination, which hinder MSW and KPs from accessing healthcare. It also tackled operational challenges like incomplete referrals, poor understanding of data tools, and communication gaps in viral load results. Guided by the Health for All Training Curriculum, the sessions covered LGBTIQ-friendly service delivery, stigma reduction, and improved collaboration between healthcare workers and community-based teams like Peer Educators.
15. CHERA's efforts have strengthened HIV prevention and treatment services for KPs, but the lack of government action highlights a critical gap. Donor-driven initiatives, while impactful, underscore the need for Malawi to prioritize equitable healthcare access for marginalized populations in its national strategies. This is particularly the case given the recent decision of the United States to pause and review federal funding for development assistance, which has impacted different components of the HIV response, and has even affected the work of the UN agencies. The government has thus far benefited from civil society being able to step into the gaps with regards to reaching marginalised communities but it may not be able to do so, given the climate of declining financial support for civil society. For example, CHERA which has been historically funded by PEPFAR, USAID, UNAIDS, UNDP, and others, but the organization is currently grappling with declining financial support which has been exacerbated by the USAID funding freeze.
16. It is clear that without sustained government commitment, including through an increase in domestic sources of financing for the public health system and the HIV/AIDS response, the long-term sustainability of these gains remains uncertain.

### **Decriminalization of sex work in Malawi**

17. We regret that no recommendations on the rights of sex workers were made to Malawi. Whilst sex work or the sale of sex services itself is not explicitly criminalised in Malawi, there are a number of related criminal offences are often used as a reason to target, harass, abuse and arrest sex workers. One such provision is section 146 of the Penal Act which makes it illegal to live off the earnings of a sex worker. In the past, this was understood by lower order courts to include sex worker's own earnings as well as those of other sex workers and was used to bring charges against sex workers. Despite the 2016 High Court clarification that the intent behind section 146 was to protect sex workers from those who exploit them, sex workers are still harassed under this provision and indeed under the now struck down "rogue and vagabond". The persistence of laws that criminalize aspects of sex work contributes to an environment where law enforcement harasses, detains, and extorts money or sex from individuals engaged in sex work. The perception of illegality associated with sex work in general, serves to create a hostile environment for sex workers to live, work, and indeed organise. The de facto criminalization of sex work creates barriers to the human rights and well-being of sex workers.

18. Sex workers in Malawi have consistently reported being targeted in police sweeping exercises, where mass arrests are conducted using petty offence laws, such as being "idle and disorderly." Once detained, they fear sexual abuse, harassment, intimidation, or corruption, including demands for bribes to secure their release. These abuses, often perceived as normal by those tasked with protecting them, are rarely reported, emboldening perpetrators who believe they can act with impunity.
19. In December 2020, the African Court on Human and Peoples' Rights criticized Malawi's petty offence laws for disproportionately punishing poor and marginalized groups, including sex workers, violating their rights to equality and non-discrimination. In November 2022, the High Court of Zomba echoed these concerns, condemning sweeping exercises for targeting individuals without evidence of criminal activity, simply for being on the street at night. These practices persist. An anonymous sex worker in Dedza (2022) highlighted the need for accountability, via a project by CHREAA and SALC aimed at empowering communities against police abuses: "If laws holding police accountable exist, grassroots communities should be educated about them. If not, such laws must be created. Punishments for police abuse of power should be widely publicized to deter future offenders." These efforts underscore the urgent need for legal reforms and accountability to protect the rights of marginalized groups.
20. This climate of de facto illegality, also poses a significant risk to those working on the rights of sex workers. CHERA faces significant challenges in a punitive and restrictive environment, marked by widespread stigma, and a shrinking space for civil society engagement. In a context where sex work is perceived as illegal, the organization confronts societal discrimination, legal barriers, and resource constraints, which hinder its efforts to protect the health, rights, and dignity of male sex workers. These challenges exacerbate the vulnerability of an already marginalized community, undermining progress toward social inclusion and equitable access to services. However, as it is restricted to operating within a public health framework focused on HIV, CHERA's ability to advocate for the decriminalization of sex work and broader sex worker rights is severely limited.
21. There is a need to implement legislative reforms to decriminalize all aspects of sex work, including the provision that criminalizes. This reform would align the country's legal framework with international human rights standards, such as the principle of non-discrimination on any grounds, and the right to privacy. Decriminalisation goes some way towards ensuring the protection of sex workers' rights, dignity, and safety by reducing discrimination, improving access to justice, and helping to safeguard sex workers from exploitation and abuse by law enforcement.

**Repeal of laws that criminalize LGBTI individuals, relationships, and those who work with the LGBTI community.**

22. Progress on decriminalization of consensual sexual activities has been inadequate despite repeated recommendations in previous cycles, including 12 recommendations out of a total of 15 recommendations pertaining to sexual orientation, gender identity, and sex characteristics given in the last cycle. Including the following noted recommendations:
  - 124.19 Decriminalize consensual sexual relations between adults of the same sex and expand its anti-discrimination legislation to include a prohibition of discrimination on the basis of sexual orientation and gender identity (Iceland);

- 124.20 Uphold the principle of non-discrimination by decriminalizing consensual same-sex relations, and explicitly include sexual orientation and gender identity among the grounds of discrimination prohibited by the Constitution (Ireland);
- 124.21 Repeal all legal provisions criminalizing consensual same-sex relations and prevent discrimination and abuse against lesbian, gay, bisexual, transgender and intersex persons (Italy);

23. Article 12 of the Constitution guarantees equal protection under the law for all individuals, but the criminalization of LGBTI individuals contradicts this principle, institutionalizing discrimination based on sexual orientation. The legal framework continues to criminalize the rights and relationships of LGBTI individuals, fueling stigma, discrimination, and human rights abuses. Despite these issues being raised in previous cycles, there has been insufficient progress in repealing these discriminatory laws. The criminalization of same-sex relationships and the harassment of those who support the LGBTI community not only perpetuate a culture of intolerance but also lead to violations of fundamental human rights, perpetuates stigma, discrimination, and violence against LGBTI individuals.
24. Contrary to its human rights obligations under regional and international law, Malawi's current legal framework, criminalizes same-sex relationships. In Malawi, sections 153 and 156 of the Penal Code, which criminalize homosexuality, and the new amendment to the Penal Code, section 137A, which criminalizes same-sex relationships between women, need reviewing to ensure they align with international human rights standards and do not discriminate against LGBTQ+ individuals.
25. A recent challenge in the Constitutional Court over the validity sections 153, 154 and 156 of the Penal Code in light of the constitution failed, the decision was handed down on June 28, 2024. The three-member judicial panel dismissed an application from Jan Willen Akster, a Dutch citizen, and Jana Gonani, a trans woman and sex worker, challenging the constitutionality of Penal Code sections 153, 154, and 156. These sections criminalize anyone who has "carnal knowledge" of any person "against the order of nature," or who attempts to commit an "unnatural offence" or who undertakes "indecent practices." These provisions are vague and overly broad, facilitating anti-LGBT discrimination, and can result in sentences of up to 14 years' imprisonment.
26. Decriminalizing same-sex relationships is a critical first step toward reducing stigma and enabling LGBTI individuals to access public services such as healthcare without fear. To address the link between criminalization and new HIV infections, Malawi must take decisive action. It is essential to promote LGBTI-friendly healthcare by training providers to offer non-discriminatory, culturally competent care, and ensuring that HIV prevention and treatment services are accessible to all. Expanding outreach and education through funding and supporting community-led initiatives will help bridge the gap in services and empower LGBTI individuals to take control of their health. Only by addressing the root causes of stigma and discrimination can Malawi create an inclusive and effective HIV response that leaves no one behind. There is a need to actively engage marginalized communities, including sex workers and sexual minorities, in discussions related to human rights policies to ensure their voices are heard and their specific needs addressed. By involving these groups in decision-making processes, the government can better understand the challenges they face and develop targeted initiatives that effectively protect their rights.
27. Malawi must meet the standards under the African Charter on Human and Peoples' Rights, particularly Resolution 275, which emphasizes the state's responsibility to ensure that people experience neither violence nor discrimination on the basis of real or perceived sexual orientation or gender identity. Following the guidelines issued by the ACHPR on the

implementation of this resolution by state and non-state actors, would serve to move the needle on the realisation of the rights of LGBT+ people.

## **Recommendations**

We call on the government of Malawi to:

1. Actively engage marginalized communities, including sex workers and sexual minorities, in discussions related to human rights policies to better understand the challenges they face and develop targeted initiatives that effectively protect their rights, ensuring their voices are heard and their specific needs are addressed.
2. Decriminalise all aspects of sex work, including 'Living on the proceeds of sex work' and place a moratorium on the use of this and any other laws or bylaws that are used to harass, detain or extort money or sex from sex workers.
3. Enact an anti-discrimination legislation to protect LGBTI individuals from discrimination in sectors such as healthcare, explicitly prohibiting discrimination based on sexual orientation and gender identity.
4. Repeal laws that criminalise consensual same sex conduct and immediately reinstate the moratorium on the arrest and detention of persons for no reason other than their real or perceived sexual orientation and gender identity and expression and/ or suspected or actual consensual same sex conduct.
5. Put in place effective mechanisms, such as training for health care workers on human rights as well as feedback mechanisms, to ensure that the delivery of public health services is done in a rights based, confidential, respectful and non-judgmental manner.