

	 UNIVERSITY OF GOTHENBURG	

**THE CONTROVERSY OF HOMOSEXUALITY: A Critical Look  
At The Issues That Make Legalizing Homosexuality In Malawi  
Difficult**

*By*

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## **Declaration form**

The work I have submitted is my own effort. I certify that all materials in the Dissertation which is not my own work, has been identified and acknowledged. No materials included for which a degree has been previously conferred upon me.

**Signed:.... Manuel S. Malamba.....22<sup>nd</sup> May, 2012**

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## **ABSTRACT**

Homosexuality still remains to be one of the most controversial issues in the world today. The United Nations and other human rights bodies have postulated that all laws that discriminate against people on the basis of their sexual orientation violate human rights. However, despite this, many countries around the world including Malawi still maintain laws that object to same-sex relationships. In Malawi the issue of homosexuality was not in the public domain until recently after the arrest of a gay couple in 2009. In reaction to the arrest, the government, religious leaders, traditional leaders condemned same-sex relationships. They asserted that homosexuality is against Malawian culture and is ultimately against the will of God. Since the arrest, there has been an intense debate between the Malawian Government and some Civil Society Organizations (and donors) on whether to legalize homosexuality or not.

The study aimed at finding out the factors that could make legalizing homosexuality in Malawi complex. A qualitative study was employed to find out the attitudes that people have on same-sex-relationships. The study also aimed at finding out the reasons why people hold particular attitudes on same-sex relations. Religion, Culture, politics and the media were determined to be the major factors that shape peoples' attitudes on same-sex relationships in Malawi. A discussion on how criminalization of homosexuality violates human rights in the Malawian context was also central to this study. The research concluded that the government should repeal the old colonial laws and enact new laws based on a number of facts unveiled in the research.

## **ACRONYMS**

**ACHPR:** African Charter on Human and People's rights

**CEDEP:** Centre for Development of People

**CHRR:** Centre for Human Rights and Rehabilitation

**CEDAW:** Covenant on Elimination of All Forms of Discrimination Against Women

**CSOs:** Civil Society Organizations

**ICCPR:** International Covenant on Civil and Political Rights

**ICESCR:** International Covenant on Economic Social and Cultural Rights

**IGLA:** International Gay and Lesbian Association

**IGLHRC:** International Gay and Lesbian Human Rights Commission

**LGBT:** Lesbian Gay Bisexual and Transgender

**MBC:** Malawi Broadcasting Corporation

**NGOs:** Non Governmental Organizations

**PAC:** Public Affairs Committee

**UN:** United Nations

**WHO:** World Health Organization

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## CHAPTER ONE

### 1.0 Introduction

Across the world today, the debate over homosexuality continues, with great variation in public opinion about the acceptability of homosexuality, laws regulating same sex unions and penalties for sexual behaviours (Adamczyk and Pitt, 2009). Vast changes in the engagement of human rights with sexuality have been made over the last two decades. The issue today is no longer whether human rights will engage with sexuality, but rather involves very particular practical questions: on what terms, for whom, for what purposes, about which aspects of sexuality, and with what limits (International Council on Human Rights policy, 2009). Sexual rights are one of the most controversial groups of rights. Miller (2000, et al., cited by the International Council on Human Rights Policy, 2009) states that early efforts to bring human rights and sexuality together suffered from an initial focus on protecting people from harm: from sexual harm in the case of girls and women, and from extreme abuse killing in the case of persons then identified as gay or transgendered. The situation is now different. Today, the language of sexual rights is employed by non-governmental organizations (NGOs), advocates, and policy makers as well as scholars (Tyndale et al., 2008). But what are sexual rights?

What does the term “sexual rights” mean? The most commonly cited definition of sexual rights is the one cited by the World Health Organization (WHO). WHO on their website state that “Sexual rights embrace human rights that are already recognized in national laws, international human rights documents and other consensus statements. They include the right of all persons, free of coercion, discrimination and violence, to: (1) the highest attainable standard of sexual health, including access to sexual and reproductive health care services; (2) seek, receive and impart information related to sexuality; (3) sexuality education; (4) respect for bodily integrity; (5) chose their partner...the responsible exercise of human rights requires that all persons respect the rights of others “(WHO, 2012). According to Katz (1995, cited by Hoad, 2004), the western definition of homosexuality as same sex-erotic attraction was not coined until 1869. In this study the terms Lesbian Gay Bisexual Transgender (LGBT), Homosexuality and same-sex relationships shall mean the same thing to avoid confusions.

The link between human rights and sexual orientation comes because of the principles of equality and non-discrimination. The Malawian constitution states that discrimination of any

form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status (Malawi Constitution). Section 12(iv) of the Constitution of Malawi also says that “the inherent dignity and worth of each human being requires that the State and all persons shall recognize and protect fundamental human rights and afford fullest protection to the rights and views of all individuals, groups and minorities whether or not they are entitled to vote” (Constitution of Malawi, 2004). Malawi is also a party to some regional and international instruments that promote non-discrimination of people.

The United Nations (UN) treaty bodies examine sexual identities, practices and gender categories from certain perspectives with particular focus on sexual orientation (but limit their concern on homosexual orientation) and sexual violence against women (International Council on Human Rights Policy, 2009). This thesis will focus on homosexual rights in particular as a part of the broader issue of sexual rights. UN treaty bodies have adopted a number of comments and recommendations that are relevant to sexual rights; for instance five of these treaty bodies name sexual orientation explicitly (International Council on Human Rights Policy, 2009).

However, despite the adoption of these treaties, around the world people are discriminated against because of their sexual orientation. The thesis will focus mainly on homosexuality in Malawi. Homosexuality in Malawi is currently one of the most debated issues. The constitution of Malawi prohibits same-sex relationships. This has led to a verbal conflict between the government of Malawi and civil society organizations (and also donors to Malawi). As a result of this there has been a lingering question on whether to legalize homosexuality or not.

### **1.1 Background to the problem**

Same-sex relationships exist in Malawi (CEDEP, 2011). Issues of homosexuality were not commonly discussed among Malawians until recently. In 2009 a gay couple named Steven Monjeza and Tiwonge Chimbalanga were arrested in Malawi after having a public engagement ceremony (National Newspaper, 2010). They were arrested because Malawian courts criminalize homosexuality. Sections 137A, 153 and 156 of the Penal Code of Malawi criminalize consensual sexual activity between individuals of the same sex with penalties ranging up to

fourteen years and the option of corporal punishment (Malawi's NGO shadow report, 2011). When the couple was arrested public discussions on homosexuality were inevitable and the case had extensive coverage in the media.

In the case of the *Republic v Steve Monjeza and Tiwonge Chimbalanga*, the accused were charged under section 153 and 156 of the Penal Code. In the judgement, Chief Resident Magistrate described same-sex marriage as bizarre and that Malawi society was not ready to see its sons or daughters marrying each other and that there was need to pass scaring sentence to protect the public and to scare others who might want to emulate 'this horrendous act' (CEDEP and CHRR, 2011).

In reaction to the arrest, the government of Malawi banned people from discussing the issue. This was through a press statement issued by the then Minister of Information and Civil Education in March 2010 where the public was urged not to waste time by talking about the case (CEDEP and CHRR Human Rights manual, 2011). The State President also ordered all civil servants not to answer or say something about the case. Malawians have not been able to effectively address issues of sexuality because discussions on sexual matters are taken as taboo. Two local NGOs in Malawi namely The Centre For the Development of The People (CEDEP) and the Centre for Human Rights and Rehabilitation (CHRR) played a vital role after the arrest of the couple in fighting for their rights.

Many international human rights bodies including the United Nations (UN) criticized and condemned the arrest of the couple. Navi Pillay a top UN human rights official said that "laws that criminalize people on the basis of their sexual orientation are by nature discriminatory, and as such are in apparent violation of a number of key international treaties and instruments, including the African Charter on Human and People's rights" (Goldberg, 2010). Other human rights non-governmental organizations like Amnesty International and the International Gay and Lesbian Human Rights Commission (IGLHRC) also condemned the arrest and conviction of the couple.

Despite the criticism, the then State President of Malawi Bingu wa Muntharika insisted that the practice of homosexuality is not part of Malawian culture (Chinoko, 2012). He said it is alien culture with its origins from the west (Chinoko, 2012). Malawi is a Christian dominated country

and many top ranked religious figures also condemned homosexuality. Top ranked Muslim officials also condemned homosexuality.

After the subsequent arrest and all court proceedings the gay couple was sentenced to 14 years in prison. The Malawian government received a lot of pressure from the international community after the conviction of the couple. The UN secretary general Ban ki Moon visited Malawi to add more pressure on the Malawian government to release the couple. Eventually, the government succumbed to the pressure and the gay couple was pardoned by former president of Malawi Bingu wa Mutharika. In his speech after pardoning the couple, the state president opined that the couple was only pardoned for the crimes they committed and convicted for. He said if the couple continued their relationship after being released they risked another arrest.

## **1.2 Problem Statement**

Malawi like most African states has a penal code that makes same sex relationships illegal. Despite pressure from civil society organizations and the international community the Malawian government still cites that legalizing homosexuality is against Malawian customs. To cement its position, the government has recently enacted new laws that further criminalize same-sex relationships (Jimu, 2011). The paper seeks to delve deep into the reasons why the Malawian government and other stakeholders think legalizing homosexuality is against public interest. The debate on whether the Malawian courts should still continue criminalizing homosexuality revolves around whether the people in question should be accepted within the Malawian cultural and religious contexts. To understand the problem clearly, the researcher wants to find out the factors that shape the attitudes of people on to same-sex relationships in the Malawian context.

The thesis will revolve around the Tionge Chimbalanga and Steven Monjeza case (The case of the gay couple referred to above). The study therefore seeks to investigate the major factors that could make legalizing homosexuality in Malawi difficult. The study will not focus only on the legal aspects of the case but also will focus on cultural, religious and political factors involved.

Malawi is a high HIV&AIDS prevalence country. The epidemic greatly affects Malawi's social and economic fabric. The Malawian government is fighting the disease by adopting a number of programs and policies. Men-who-have-sex-with-men (MSM) are particularly vulnerable to HIV infection as demonstrated by studies in many settings (UNAIDS, 2000 cited by CEDEP and

CHRR, 2011). However, because Malawi does not recognize them (MSM) it means they are not included in the state's health programs and policies. This is a problem area that is evident. How will the Malawian government fight the disease if it does not want to recognize a minority group that is significant if the disease is to be eradicated?

### **1.3 Research Aim**

The main purpose of this research is to find out the complex issues that make legalizing homosexuality in Malawi difficult. People's attitudes towards same-sex relationships are central to the whole debate on homosexuality in Malawi. To understand the possible causes of homophobia the study needs to find out what shapes people's attitude on same-sex relationships. Other studies have established that the main factors that are responsible for shaping people's attitudes on same-sex relationships are Culture, Religion and Politics (See Adamczyk and Pitt, 2009). However, these factors must be investigated to determine their influence in the Malawian setting. To find out these complex issues the researcher set the following objectives:

### **1.4 Objectives**

- To investigate the link between religion and discrimination based on sexual orientation in the case of Malawi
- To investigate the roles of Christian and Muslim politics in the treatment of homosexuals in Malawi
- To find out the general views on what stand government should take in terms of policy, regulation and laws for homosexuality in Malawi
- To investigate the link between culture and homophobia in Malawi and how culture shapes people's attitudes on same-sex relationships
- To investigate the extent to which the media influences attitudes on same-sex relationships

#### **1.4.1 Research Questions**

Below are some of the questions that the research will seek to answer in order to achieve the objectives of the study.

- To what extent do various religions in Malawi influence people's attitudes on same-sex relationships?
- Does Malawian culture influence people's attitudes on same-sex relationships?
- To what extent do the media influence people's attitudes on same-sex relationships?
- To what extent does politics influence homophobia?

## **1.5 Justification of Research**

The study is important and relevant because currently issues of homosexuality are ever present in the public domain in Malawi. There has been an ongoing conflict between the Malawian government and the Civil Society Organizations (CSO's) on whether to make homosexuality legal or not. The study will therefore be important to help in understanding the underlying problems that surround legalizing homosexuality in Malawi. The study is pivotal because after shedding some light on some of the issues it could perhaps be possible to map a way forward to resolving the conflict. Since public opinion is an important factor in developing laws and policies of a country, the research will be important because it will analyze some public opinions that could help map a way forward in resolving the conflict.

The other point worth noting is that since the debate on homosexuality is relatively new in Malawi, the research will contribute to body of knowledge on studies on same-sex relationships and human rights in Malawi. The conspicuous lack of data tends to have multiple impacts on LGBT persons and how their issues are addressed because it undermines the extent to which interventions exclusive for LGBT persons would be planned and implemented efficiently (CEDEP and CHRR, 2011).

## **1.6 Disposition**

The paper is divided in five chapters. The first chapter is the introductory part that outlines the objectives of research. A problem area is also identified in this section. The chapter gives a background of the status of homosexuality in Malawi and also justifies the importance and relevance of this project. *Chapter two* is the Literature review in which a review of the works of previous studies related to the current research is presented and critically analyzed. The major debates on homosexuality are the main focus in this section. This chapter gives direction to this research. *Chapter three* is the Methodology. This is where the chosen research techniques

employed in the study are discussed. The procedures involving data collection and validity are also explained. *Chapter four* discusses the findings of the study. The analysis of the findings is also part of this chapter. *Chapter five* concludes the study. This section discusses what could be learned from the study after an analysis of the findings. Finally, the researcher also recommends a number of points in this section.



## **CHAPTER TWO**

### **2.0 LITERATURE REVIEW**

This section of the thesis will discuss the concept of “sexual rights”. It will discuss the debates in human rights regarding sexual rights. It will discuss why the issue of sexual rights is a human rights issue. The chapter has also attempted to discuss the status of homosexuality in Malawi. Factors that shape people’s attitudes on same-sex relationships are also discussed. This section will provide the framework on how data will be analyzed later on in this project. To make the debates clearer and easier to follow, the researcher has divided the chapter into sub-sections.

#### **2.1 Homosexual Rights and their current status in Africa**

The issue of homosexuality remains to be one of the most controversial issues in the world today. In 2007, the International Gay and Lesbian Association (IGLA) performed a world survey on the legal status of homosexuality. As of 2007, 40 of Africa's 53 countries criminalized and viewed homosexuality in various capacities meaning that 75% of Africa outlaws homosexuality (IGLA, 2007). Research on homosexuality in African studies has split between two predominant fields (Anderson, 2007). Amory (1997), reports that the western scholars research and theorize about the diverse history of sexuality and gender in Africa, while Africans in the field are focusing on post-colonial practice. This academic difference reflects the two aspects of homosexuality in Africa, the historical and the contemporary (Anderson, 2007). It also identifies the two areas where African scholars can influence public opinion on homosexuality in Africa; firstly the realization that gay rights are human rights and not ‘un-African’ as it is usually claimed, and secondly that homophobia represents the lingering imperialism of both colonial and imported religion (Anderson, 2007).

#### **2.2 The question of “identity”**

The concept of homosexual rights problematizes several areas, such as definitions of sexuality and identity, cultural relativism versus the universalism of human rights, the individual and community, cultural imperialism, cultural convergence, globalization and international relations, to name as stated by Offord and Cantrell, (2001). Sexuality and identity are highly contentious areas which are under immense debate within most schools of thought (Fuss, 1989; Stein, 1990).

For a formulation of homosexual rights to be substantive, the whole question of identity is crucial in terms of organizing a gay and lesbian presence in law and politics. Questions of identity and naming oneself “gay” or “lesbian” are important in the discussion of human rights and homosexuality in southern Africa (Dunton and Palmberg, 1996). To demand to be protected against harassment and discrimination on the grounds of sexual orientation involves some degree of acknowledgement of the nature of one’s sexual preferences.

According to the International Council on Human Rights (2009) problems of definition exist in attempting to situate the concept of homosexual rights in the human rights context. Homosexual rights represent first and foremost the right of an individual to express his or her sexuality with freedom and dignity, and to do so protected by the law of the State (Offord and Cantrell, 2001). How does one express his or her sexuality with freedom and dignity when the state in which they live in has restrictive laws to prevent it? Herein is the central difficulty.

### **2.3 The question of ‘legitimate sex’ and the state**

The modern day state has been regulating sexual behaviour of its citizens. The state from the beginning of its establishment has decided what “legitimate sex” is. International human rights law facilitates the state’s repressive role in regulating sexual activity and expression (International Council on Human rights, 2009). International human rights law states very little about the national regulation of sexuality. States are permitted to limit sexual behaviour but only on certain grounds which are generally phrased in the following terms: in conformity with the law; necessary in a democratic society; in the interests’ of national security or public safety, public order; protection of public and health morals or the protection of public health morals; or the protection of rights and freedoms, and reputations of others (ICCPR, articles 18, 19, 21 and 22). Bamforth (1997) asks what these justifications imply for sexual rights, and where should their values or content be challenged?

Freedman et al. (2004 cited by International Council on Human Rights Policy, 2009) asserts that when many key international human rights instruments were drafted, in most modernizing states marriage and reproduction provided the legal and social context for acceptable sexual conduct. He says two kinds of human rights standards related to homosexuality emerged. One addressed the conditions of entry into marriage: “marriage must be entered into with the free consent of the

intending spouses (ICESCR, Article 10). The other addressed equality within marriage. The importance of marriage consent in human rights and sexual relations was set out clearly though it was subsumed within the practice of consenting to marriage (International Council on Human rights, 2009). In most developed states, the governments are advocating for easier conditions for homosexuals. In contrast, in developing countries like Malawi the state still is the main regulator of sexuality. The human rights debate articulates the tension between the modern state and the “sphere of individual freedom” (Kunhardt, 1987, cited by Heinze, 1995:69).

In the last 40 years, seismic changes have occurred in social understandings of what is acceptable sexuality (International Council on Human Rights, 2009). There have been several factors that have contributed to different attitudes that people have towards homosexuality. Religion, politics and culture are some of the major factors. Below is a discussion of these factors in detail.

#### **2.4 Religion and Homosexuality**

Personal religious beliefs and affiliation are usually seen as powerful predictors of attitudes about homosexuality. As Yip (in Adamczyk 2009) states, most religions tend to categorize behaviours associated with homosexuality as “unnatural”, “ungodly”, and “impure”. Active religious involvement, regular exposure to religious literature, and frequent interaction with religious friends are likely to encourage anti-homosexual attitudes (Olson et al., 2006; Sherkat and Ellison, 1997; Scheitle, 2009 in Adamczyk 2009). Cross-national differences in cultural orientations suggest that the role that religion has in explaining sexual attitudes may depend on a nation’s cultural context (Adamczyk and Pitt, 2009). Studies conducted in United States and Europe have suggested that the religious culture of a nation may shape attitudes that people have on homosexuality. Adamczyk (in Felson and Adamczyk, Moore and Vanneman) has suggested that even people who are not personally religious may be influenced by the religious culture in which they live.

#### **2.5 Culture and Homosexuality**

Culture has been one of the major reasons most African governments have rejected homosexuality. Lamb (1982) asserted that homosexuality in Africa is virtually unknown and said that Africa is rigidly heterosexual. Scholars in agreement with Lamb have particularly argued

that homosexuality is a cultural practice from the west that was brought to Africa. However, over the years Lamb's idea has been challenged by many scholars. Dynes rejects the claim that homosexuality is western culture but however attributes its current prejudice and marginalization to the missionaries outright condemnation of the practice (Pincheon, 2000 cited by Anderson, 2007). He says when missionaries came to Africa to spread Christianity, they preached against homosexuality hence the existence of homophobia today in Africa. Amory (1997) also seeks to dispel the myth of African homosexuality being a culture from the west. He says the “the white man” was most probably the source of African homophobia that perpetuates contemporary persecution. Anderson (2007) argues that colonialism may have brought Europe’s concept of homosexuality to Africa, but it did not introduce her to same-sex eroticism.

This leads to an important question. Is the western “concept of homosexuality” understood the same in all cultures across the world? Homosexual behaviour might have existed (or exists) in Malawi but it is looked at in a different perspective because of the cultural differences between the Malawi and the west. There is evidence that homosexuality existed in Sub-Saharan Africa long before colonization (Murray, 2005). Thus, this disputes the claim that homosexuality is an import from the west. Kendall (in Anderson, 2007) makes a fascinating and insightful distinction between women-to-women eroticism and the western concept of lesbianism. She uses the example of Lesotho women in a culture where there is no concept or social construction equivalent to “lesbian” (Phillips, 2001). Thus, while the western concept of lesbianism is common place in Lesotho, in the absence of the western lesbian construct this behaviour was not and is not seen as sexual or an alternative to heterosexual marriage.

In recent times a number of African leaders have openly criticized homosexuality. Robert Mugabe at one point postulated that homosexuals are “worse than dogs”. Namibia's president Sam Nujoma declared that “homosexuals must be condemned and rejected in society” (Anderson, 2007). The Malawian former president Bingu wa Mutharika had stated that homosexuality is against Malawian cultural values (Chinoko, 2012). Siker (2007), states that the prohibition of a particular behaviour should be taken as prima facie evidence for its existence.

## **2.6 Industrialization and Attitude change**

The key to solving the problem of homophobia is to change the attitudes of homophobic persons on same-sex relationships. However, what influences attitude change? According to Inglehart et al., (2002) there is a link between attitude change and economic development. In a study of 65 nations that represented 75% of world's population, Inglehart and his colleagues examined the link between economic development and attitude change in different countries. On the basis of their findings from the World Values Survey, Inglehart and Baker (2000) explain that as nations undergo the process of industrialization and modernization, attitudes and values shift away from concerns about physical and economic security to world-views that are increasingly rational, tolerant and trusting (cited by Adamczyk, 2009). He further says instead of people worrying about fulfilling basic needs like shelter, food; people become increasingly interested in issues related to subjective well-being, quality of life and self expression (Inglehart, 1977, cited by Adamczyk, 2009).

Conversely, when a nation is regularly faced with political and economic uncertainty and insecurity, people are likely to support values and norms that emphasize the familiar (Inglehart et al., 2002). However, Finke and Stark (1992) suggest that industrialization and development do not necessarily cause people to become less religious. They hold the view that the religious tradition of a nation and personal religious beliefs continue to influence attitudes and behaviours in developed countries.

## **2.7 Homosexuality in Malawi**

Same-sex relationships exist in Malawi (CEDEP and CHRR, 2011). In some instances the relationships have been formalized into marriage as exemplified in the case described above. CEDEP (2011) states that there is evidence that homosexuality is widely recognized in Malawian culture for local languages have even adopted words explaining homosexuality e.g. *Mathanyula* in Chichewa (CEDEP, 2011). The debate on homosexuality in Malawi is relatively new. Due to this fact literature on LGBT issues specific to Malawi is scanty. Queer Malawi (2008) postulated that the notable challenges for LGBTIs in the country emanate from homophobia, political and religious conservatism and patriarchy. The recognition of sexuality rights and homosexuality in Malawi raises issues of culture, morality religion.

Malawi adopted a constitution in 1994 which guarantees human rights and freedoms for its people. The issue of sexual orientation becomes a human rights issue for a number of reasons. CEDEP and CHRR (2011) state that “Homosexuals are human beings and human rights by definition imply the rights a person has, simply because he or she is a human being. These human rights are by their very nature: inalienable, implying that a person cannot lose these rights any more than a person can cease being human; indivisible, implying that you cannot be denied a right because it is less important than another right; and are inherent in a human being” (CEDEP, 2011).

A baseline study conducted by an NGO the Centre for The Development of the People (CEDEP) conducted in 2011 unveiled a number of issues concerning LGBT people in Malawi. According to the study, the majority of Malawian people think that same sex relationships are not normal and should not be allowed in Malawian society (CEDEP, 2011). Most of the people who were interviewed in the baseline study said that they started hearing issues concerning homosexuality after Steven Monjeza and Tionge Chimbalanga were arrested in 2009. There are also challenges to appreciate the existence of homosexuals in the country. Certain groups have argued that the number of people involved in same sex orientation is insignificant in Malawi to warrant actual programmes to promote these minority rights. CEPEP (2011) asserts that this has been based on the fact there is no data to determine the gay population in Malawi.

## **2.8 Politics, Donor aid and issue of Homosexuality in Malawi**

It is politically important that human rights have been codified in international and national law, but it is a mistake to believe that the legalization of human rights takes the concept out of politics (Freeman, 2002). This is mainly because of the content in international law also requires political consent from states to be applicable. The state shall always be a major player as far as human rights are concerned because their (rights) recognition and content application are conditioned by political factors.

Malawi like most developing nations depends on donor aid to supplement its national programmes. This aid usually comes under some conditions that Malawi has to fulfill. Some of the conditions include good governance and transparency and accountability. Since the gay rights saga began in Malawi donors have questioned Malawi’s human rights record. The donors

like Britain have postulated that Malawi must repeal all the oppressive laws and adopt new laws that will enable homosexuals live freely (The Nation Newspaper, 2011). The United States a major donor to Malawi for instance announced that it would use foreign aid to pressure countries like Malawi to decriminalize sexual acts (Smith, 2011). In response, the Malawian government through the Justice Minister Ephraim Chiume stated that "It will now review provisions of the penal code concerning "indecent practices and unnatural acts", "In view of the sentiments from the general public and in response to public opinion regarding certain laws, the government wishes to announce to the Malawi nation that it is submitting the relevant laws and provisions of laws to the law commission for review,". Despite such sentiments from the government nothing concrete has been put forward and homosexuality still remains illegal.

This has however not influenced the Malawian government. In fact, in its response it has passed more laws that further criminalize homosexuality. The government has accused the west of tying its aid to conditions that are not suitable for Malawi. Because of the gay issue and other human rights issues like press freedom in the country some aid was withdrawn. This has been affecting Malawi's already fragile economy. This also justifies why it is important to look at the gay issues in Malawi since the issue indirectly affects everyone in the country.

It is argued that discrimination based on sexual orientation violates a number of rights on the people affected. Some of the rights include right to dignity, right to privacy, right to non-discrimination and in some instances even the right to health.

## **2.9 The Rights to Privacy, Non-discrimination, Health, Dignity and Homosexuality in Malawi**

### **2.9.1 Privacy**

When the Malawian couple was arrested in 2009 some scholars and commentators have argued that the state violated their right to privacy among other rights. It is also argued that the manner in which one of the offenders was treated by the authorities when he was forced to undress several times for people to 'verify' whether he was a woman was contrary to the Constitution of Malawi and its international human rights obligations under the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights (Mujuzi, 2011). According to CEDEP and CHRR (2011) restrictive laws on homosexual practices tend to allow

for invasive actions that interfere with a person's privacy and human dignity, such as subjection of suspected homosexuals to intrusion into their bodily integrity through their subjection to non-consensual medical tests, or experiments, searches of their homes, communications among others.

Section 21 of the Constitution of the Republic of Malawi states that "Every person shall have the right to personal privacy which shall include the right not to be subjected to: (a) searches of his or her person, home or property; (b) the seizure of private possessions; or (c) interference with private communication, including mail and all forms of telecommunications (Malawi Constitution, 2004). The Universal Declaration of Rights (UDHR) also states that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. However, despite international law and the Malawian constitution citing the above homosexuality still remains an illegal act in Malawi.

### **2.9.2 Non-discrimination**

In some instances homosexuals are discriminated against because of their sexual orientation. Article one of the Universal Declaration of human rights states that all human beings are born free and equal in dignity and right (UDHR, art. 1). Equality, and thus prohibition on discrimination on any ground, is at the foundation of the human rights policy of the UN (Smith, 2008). So discrimination on any ground is against the UN charter.

Section 20 of the Malawian Constitution states that "discrimination of any persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status." The African Charter on Human and Peoples Rights (ACHPR) also states that every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any



other opinion, national and social origin, fortune, birth or other status (cited by CHRR and CEDEP, 2011).

### **2.9.3 Right to Health**

Issues of right to health are raised when there are laws that bar the practice of homosexuality. As observed by CEDEP and CHRR (2011) persons in this category are often left out on various public health initiatives, such as education programmes, or provision of disease/infection prevention and care and support initiatives, leading to the denial of the right to health for persons in this category. Section 13 of the constitution of the Republic of Malawi states that “the State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals: Health: To provide adequate health care, commensurate with the health needs of Malawian society and international standards of health care (Malawi Constitution, 2004).

Malawi is one of the poorest nations in the world and it has struggled to deal with the HIV/AIDS pandemic. Human rights are an integral part in addressing the HIV/AIDS epidemic. According to CHRR and CEDEP (2011) human rights violations increase the vulnerability of HIV infection. In the context of homosexuality “discriminatory policies and practices can also result in people being denied access to the information, support and services necessary to make informed decisions and to reduce their vulnerability and risk of infection (CEDEP and CHRR, 2011). Because of fear of stigma and discrimination coupled with unfriendly laws many homosexuals in Malawi operate underground which poses serious challenges on HIV and AIDS interventions (CEDEP and CHRR) , 2011).

### **2.9.4 Right to Dignity**

According to the United Nations Declaration on Human rights all human beings have the right to be treated with dignity and respect. Homosexuality as a form of sexual orientation raises issues on the human right to human dignity. The aspect of personal autonomy which is central to the right to human dignity is implicated by laws or practices that prevent people from acting as autonomous beings in prohibiting them from conforming to their particular sexual orientation (CEDEP and CHRR, 2011). The operation of the guarantees for the human right to personal

autonomy in this regard implies strict restrictions on what actions the state or private entities can regulate on private acts done by consenting adults in private.

## **CHAPTER THREE**

### **3.0 METHODOLOGY**

This section of the paper discusses the research methodology that was employed in the research. This involves looking at the overall research design, data collection procedure, limitations of the study, data processing and analysis and the reliability of the research. Because data on homosexuality in Malawi is scanty, the researcher sort the help of an NGO called CEDEP in gathering data (secondary) on Homosexuality and LGBT issues in Malawi. The researcher chose to work with CEDEP because after thorough consultation, it was observed that CEDEP was the only NGO that was very active in the promotion of gay rights. So it was most likely that the NGO in question would have a substantial amount of data relating LGBT issues.

CEDEP recently carried out a cross-country study on LGBT issues in Malawi in 2011. As the CEDEP study had already covered many of the issues that interest the researcher, the researcher has found it useful to relate to it as a kind of ‘baseline study’. The Objective of the baseline study by CEDEP was to examine the degree of homophobia in Malawian society and investigating the linkages between gender, religion and culture in relation to discrimination levels, stigma, and perceptions concerning LGBT persons as well as LGBTI-related laws (CEDEP, 2011). The objectives of the baseline study were in line with what this thesis seeks to investigate. Because of this reason and because data on LGBTI issues in Malawi is hard to access (because of lack of research), the thesis used some of the findings of the baseline study by CEDEP to supplement its analysis.

#### **3.1 Qualitative Research**

As pointed out earlier this research is a qualitative one. Ranjit (1999) postulates that a study is classified as qualitative if the purpose of the study is primarily to describe a situation, phenomenon, problem or event and that the analysis is done to establish variation in the situation or phenomenon without quantifying it. The researcher wants to get knowledge and feelings that people have on same-sex relationships. This is the reason why the study falls under the category of qualitative research. This research technique is suitable for this research because it gives room to the researcher to engage critical thinking when evaluating existing literature (Patton, 1987). The other strength of qualitative research methodology that makes it suitable for this research is

that it is more flexible and open to new discussions of processes that are disclosed during the interviews and focus group discussions.

### **3.2 Data Collection**

The research used both primary and secondary sources of data. The secondary data were sourced from pieces of literature by scholars and commentators while the primary data was sourced through some interviews and a focus group discussion.

### **3.3 Secondary Data**

Secondary data is the data that was not gathered by the researcher first hand. The reasoning for the use of rich source of secondary data in a field research is to have a fair appreciation of the problem of my inquiry and possibly explore alternatives on interpretational tools to analyses the problem to arrive at a solution (Kvale, 1996 cited by Chimbuto, 2011). Although these are secondary sources of data, the data obtained from these sources is valid and relevant because it is sourced from reputable academic databases.

There is a lot of literature on human rights that this research made use of. The data was sourced from Human Rights Reports, newspapers, articles, journals, United Nations Documents, Malawi government documents, several international legal documents especially from human rights conventions and internet sources. Reports from a Malawian NGOs namely Centre For The Development of People (CEDEP) and Centre for The Rehabilitation of the People (CHRR) were used. They were the major sources of secondary data on LGBT issues in Malawi.

Some of the secondary data was also sourced from books written by reputable scholars in the field of human rights. Some of the findings in this research are based on a report of a baseline study that was conducted by the NGO Center for The Development of The People already referred to above. The baseline study data was not only valid and relevant but it was also the only valuable comprehensive piece of data that was available to the researcher on LGBT issues in Malawi.

The data was also relevant because the baseline study is recent hence the findings are up to date. It was also justifiable to use the findings of the baseline study because a huge sample size was used in the study hence making the findings in the study more representative. Data was collected

in all three regions of Malawi. This meant that the researcher would have a better understanding of the state of LGBT issues in the country.

### **3.4 Primary Data**

To supplement the data that was collected from secondary sources, the researcher also personally conducted a number of in-depth-interviews and one focus group discussion. This section will discuss how the data was collected in the interviews and focus group. In-depth interviews were conducted with senior officials of CEDEP, a priest, a sheikhs and a politician who is a member of Malawi's ruling political party, called the Peoples party (PP). A focus group discussion was also carried out with four traditional leaders.

The data was collected using the grounded theory approach. Grounded theory is inductively (and partly deductively), derived from the study of the phenomena it represents. The theory is generated by the observations rather than being decided before the study as in the positivist, deductive approach. The grounded theory approach enabled the researcher to go to the sources of information with an open mind to understand their perspective. The data collected coupled with the informal interactions with the community outside the interviewing session, enabled the researcher to construct meanings and draw a theory (s) based on data (Chimbuto, 2011). Thus, the theory emerging from the data was used as a tool to reinforce the researcher's investigations on the study further and at the same time acts as a tool to analyze any further data to be collected. (Charmaz 2002, Glaser & Strauss 1967; Corbin & Strauss 1998, Gray 2004, Seale 2004, Bryman 2008 cited by Chimbuto, 2011). Below is a discussion on how the researcher sampled the population in the study.

A voice recorder was used in most of the interviews to easily capture the data that was given by respondents. The recorder was also used for the purpose of ensuring the data being interpreted and analyzed was accurate since one can always refer back to the recordings if unsure of anything. The in-depth interviews and the focus group discussion(s) were conducted between February and March 2012.

### **3.5 The Interviews**

Firstly, the researcher will discuss the sampling technique that was used in the study. Sampling is a very important part of every research and the principles of sampling are key to the validity of

the findings of every study. According to List (1997) a sample is simply a sub-set of the population from which it was drawn. No matter how well a survey/research is done in other respects, if the sample does not accurately represent the population, the results cannot be applied to that population (List, 1997). The advantages of selecting a sample from the total population are that it saves time as well as financial and human resources (Ranjit, 1999).

The researcher employed a Non-probability sampling design referred to as Judgemental or Purposive sampling. The primary consideration in purposive sampling is the judgement of the researcher as to who can provide the best information to achieve the objectives of the study (Ranjit, 1999). This sampling technique is extremely useful when the researcher wants to construct a historical reality, describe a phenomenon or develop something about which only known a little (Ranjit, 1999). So the researcher was careful in selecting the participants.

Participants in the study were recruited from a selected population in urban, semi-urban locations in the districts of Blantyre and Lilongwe; the major cities in Malawi. In total two religious leaders, four traditional leaders (focus group discussion) and two CEDEP officials were interviewed. The participants were classified in two main groups. The first group of people was the group that was advocating for decriminalization of same-sex relationships in Malawi. This group of people was comprised of the CEDEP staff who advocate for gay rights in Malawi. The two staff from CEDEP were recruited from the City of Lilongwe the capital city of Malawi where their offices are based. The CEDEP officials were interviewed because the researcher wanted to find out more information regarding the baseline study they undertook and wanted to hear some extra information first hand. They were recruited by the researcher because their NGO (CEDEP) is at the centre of LGBT issues in Malawi and hence the researcher thought that they would be in a better position to give out information on same-sex relationships in Malawi.

The second group of people was comprised of people who are against the legalization of homosexuality in Malawi. This group of people included religious leaders, traditional leaders and a politician. The religious leaders and traditional leaders were interviewed because the researcher wanted to find out their views on same-sex relationships. After finding out those views, the

researcher also wanted to find out the reasons why the respondents were holding their particular views.

The religious leaders were selected based on their religions. This was because the researcher wanted to get diverse views that could arise because of the difference in religious beliefs. The researcher interviewed one Muslim leader (a Sheikh) and one Christian (a priest) since Islam and Christianity are the major religions in Malawi. The traditional leaders that participated in the study were selected based on their availability and willingness to take part in a focus group discussion. This depended a lot on their schedule to be able to take part in the discussions.

One politician a member of the people's party was also interviewed as stated above. He was selected by the researcher because he was easily accessible and because mainly he belonged to a ruling party. The essence of the politician belonging to a ruling party was that he was in a better position to elaborate the current stand of government on LGBT issues in Malawi and hence what the future holds. It was discovered that most of the things that came out of these interviews were in line with the findings of the baseline study that was conducted by CEDEP. The participants were categorized in the way described above for the purpose of easy analysis of the data.

The researcher used a number of questions that were structured in a way that helped the researcher get more data from the participants. However, the researcher had in mind the ethical implications before asking each question given that the topic of homosexuality is regarded as taboo by most Malawians. The interviews were both conducted in English and Chichewa (Malawian local language). The ones that were conducted in Chichewa were later on translated into English by the researcher.

There are a number of reasons why interviews were suitable for this study. To bring in the legal and policy dimension, in-depth interviews were conducted with senior official(s) of CEDEP and the Malawi political ruling party. Ranjit (1999) postulates that interviews are most appropriate in complex situations and for studying sensitive areas because they give the interviewer an opportunity to prepare the respondent before asking sensitive questions and explain complex

ones in person. Tacchi et al., (2003) assert that in-depth interviews will focus as much on things like feelings, meanings and understandings as they do on getting hard information.

The researcher was also at an advantage to supplement information obtained from responses from the participants, with those gained from observation and non-verbal responses. The quality of the data that is gained from most interviews depends largely on the quality of the Interviewer. If the interaction between the interviewer and interviewee is ideal quality information can be obtained. To ensure that quality information was obtained the researcher made sure there was a good understanding between him and the respondents.

### **3.6 Focus Group Discussion**

Focus groups are a form of group interview that capitalizes on communication between research participants in order to generate data (Kitzinger, 1995). The focus group used in the study consisted of four participants. The discussions in focus groups lasted usually about an hour. The idea behind the focus group method is that group processes can help people to explore and clarify their views in ways that would be less easily accessible in a one to one interview (ibid).

A focus group discussion was conducted in a semi-urban setting in Blantyre. The focus group was ideal because group work also helps researchers tap into the many different forms of communication that people use in day to day interaction, including jokes, anecdotes, teasing, and arguing (Ranjit, 1999). Gaining access to such variety of communication is useful because people's knowledge and attitudes are not entirely encapsulated in reasoned responses to direct questions (ibid).

Although not explicitly highlighted, on top of the in-depth interviews and the focus group discussion “observation of the participants” was also a vital tool in the collection of primary data. Because the gay rights debate in Malawi is on going the researcher got insights from a number of things that he heard and read in the media on same-sex relationships in Malawi. Other observations were made in the course of the focus group discussions and interviews. Some of the observations have been used in the discussion and analysis in later chapters of this study.



### **3.7 Validity and Reliability**

Validity of a research refers to the correctness or credibility of the description, explanations and conclusions of the matter at hand (Maxwell 2005, p.106). Validity is a more complex concept that tells us whether an item measures or describes what it is supposed to measure or describes (Hussey and Hussey, 1997). It is very important for a researcher to aim for validity of the results otherwise the whole research will be in vain (Kilembe, 2010). Kilembe (2010) further states that the most significant threat to validity in a qualitative research is the 'bias of the researcher'. Because it is a qualitative research the researcher tried to avoid subjectivism and hence presented the data from an objective point of view to ensure that the results are valid.

On the other hand Reliability refers to the precision of a measurement and the extent to which a test or procedure is capable of producing similar results under constant conditions on all occasions (Bryman and Bell, 2007). To ensure this, the researcher made sure that all the in-depth interviews were conducted in the same way. Overall, the researcher made sure that all necessary measures were taken in coming up with this thesis to ensure the validity and reliability of the study.

### **3.8 Ethical Considerations**

Ethics is an important part of every research. It is typically fundamental as far as the validity of the research is concerned. There are many stakeholders in research activity which include the participants in the research, the researcher and sometimes the funding body of the research (Ranjit, 1999). There a number of issues a researcher must consider when conducting research. The first point is that research must not harm participants in any way. Bailey (1976) asserts that harm not only includes hazardous medical experiments but also any social research that might involve such things as discomfort, anxiety, harassment, invasion of privacy, or demeaning or dehumanizing procedures. To ensure that there was no harm to the participants in the research, the researcher sort their full consent before engaging them. The researcher explained to respondents the purpose of the interviews and how the data they were giving out would be used. As Ranjit (1999) postulates, in every discipline it is considered unethical to collect information without the knowledge of the participants, their informed willingness, and expressed consent. Patton (1990) recommended full disclosure of the purpose of the study when doing participant

observation. In the event that some participants were unwilling to continue the interview because of the sensitive nature of the topic, the researcher allowed the participants to go and apologized to them if they were offended in one way or another. Violations of human rights in the name of scientific research have been among the darkest in history (Orb et al., 2001).

The issue of homosexuality is sensitive in Malawi and as such the researcher ensured that the privacy of the participants was respected. For instance, the politician gave out information on the condition of anonymity and the research assured him that his privacy would be fully respected.

### **3.9 Study Limitations**

There were a number of limitations to the study. The major challenge that was faced by the researcher in the study was that, recruitment of participants was a problem because of the sensitive nature of the topic. Most people consulted objected to grant interviews. Some of those who accepted withdrew from the interviews in due course because the questions were too sensitive according to them. They stated that they could not continue a discussion LGBT issues. The religious leaders that were interviewed were a bit reluctant to discuss their views on homosexuality more openly. This was the same case with traditional some traditional leaders. One traditional leader also rejected to take part in the focus group discussion because he did not like another traditional leader who was participating as well. Another setback was also that the politician refused to be recorded so the researcher was forced to get notes on paper.

The other major setback in the research was that the researcher failed to recruit more participants in the research because of mobility problems in Malawi. The research was conducted at a time when Malawi was facing serious problems of fuel shortages. This limited the study to urban and semi-urban settings where travelling was a bit easier than in contrast to the rural areas. However, despite the study limitations the researcher ensured that the data collected was accurate and not biased. Participants were made aware of their rights and hence gave out the required information that the researcher needed.

Unavailability of enough literature on LGBT issues in Malawi was also a major problem. The researcher struggled to get enough data in good time to use in this project. This delayed the progress of the project. However, the researcher used the data that became available to ensure that the project was finished in time.

### **3.9.1 Data Analysis**

The focus group discussion and all in-depth interviews (apart from the interview with the politician) were recorded on digital recorders. They have been labeled for reference and archiving. As a theory emerging from data, the study did not limit its analysis to issues that were in assumption earlier when it embarked on the investigation, rather it took equal consideration of issues that were emerging from data in the course of the analysis (Ziebland and McPherson, 2006 cited by Chimbuto, 2011).

The recorded data was later transcribed and translated verbatim. Preliminary analysis took place once a pattern was established from the data to save time and make the analysis easier. The researcher repeatedly listened to the interviews and organized the findings in themes that were emerging.

## **CHAPTER FOUR**

### **4.0 FINDINGS, ANALYSIS AND DISCUSSION**

This chapter discusses and analyzes the findings of the research. Following the field exercise that was conducted in Blantyre and Lilongwe cities, this chapter will outline the results of the study. In an endeavor to complete the matter at hand the findings have been organized to the common themes that developed in the study. Some of the debates that were discussed in chapter two (literature review) are used in analysis of the data in this section.

The findings and the discussion will help one understand why legalizing homosexuality in Malawi could be a difficult task. The attitudes that people have are central to the whole debate on same-sex relationships in Malawi. Each sub-section in this chapter discusses what the respondents said and gives an analysis. The focal point of the analysis is to unveil whether religion, culture and politics are the factors that shape the attitudes of people on same-sex relationships. The other point that was considered in the analysis is also how the factors in question shape people's attitudes on same-sex relationships. All groups of respondents are categorized in relation to the factors above and each group of participants is discussed separately to easily observe the different dimensions that arise out of the data.

#### **4.1 General perceptions on same-sex relationships in Malawi**

The majority of participants in the study thought that same sex-relationships are not normal and should not be allowed in Malawian society. Out of the total number of people who were interviewed, it was only the staff of CEDEP who said that same-sex relationships should be accepted (Interview, CEDEP-official, 08.03.2012). The remaining participants in the interviews and focus group discussion postulated that same-sex relationships should not be allowed and that homosexuals must be rejected in Malawian society. The group that objected to same sex relationships cited a number of reasons. Some of the general reasons that were cited were that same-sex relationships are against Malawian culture and that such relationships are against the will of God. Below are some of the issues quoted from the respondents in the interviews and focus group discussion. The information tells us their perception on same sex relationships.

It also has to be noted that there were no significant differences in responses depending on respondents' age, origin, religions orientation or gender. The only significant differences that were noted arose due to the difference in the levels of education of the respondents.

## 4.2 Religion

There were a number of issues that were raised by the religious leaders who were interviewed in the study. Some of the issues raised as far as religion is concerned were that religion does not condone homosexuality (interview 1, 14.02.2012) or same sex relationships. The other point that was raised was that religious values are more important than law or human rights (interview 2, 14.02.2012). The researcher was interested in figuring out how religion in the Malawian context shapes people's attitudes. To establish more information on the effects of religion on peoples' attitudes a catholic priest (a Christian) and a sheikh (a Muslim) were interviewed. The quotes below point out to some of the major issues that were raised.

1. *“Why do these people insist on same sex-relationships? Can they have Children? Gods arrangement is for a man to be with a woman.” (Interview with a priest, 14.02.2012)*
2. *“The teachings of Islam do not allow same sex-relationships. All those people who take part in such relationships are sinners and they must repent otherwise Allah will punish them.” (Interview with a Sheikh, 01.03.2012)*
3. *“God created man and woman for a reason. These people must be taught the ways of the lord.” (interview with a priest, 14.02.2012)*
4. *“Why are you so interested in such issues by the way? Are you one of the people who tell people that same-sex relationships should be allowed? If you are, Allah will punish you and you must stop and ask for forgiveness” (interview with a Sheikh, 01.03.2012)*
5. *“All pastors (priests) who say we must accept same-sex relationships are fake pastors who do not know the word of the Lord” (Interview with a priest, 14.02.2012)*

In addition to the above points another common reason that was stated by these religious leaders was that, promoting same-sex relationships was defying Gods arrangement that people should procreate (interview, 14.02.2012). The other reason for objecting homosexuality as observed above was simply that it is a sin and that the bible and Quran condemns it (Interview, 01.03.2012). The researcher also made a number an observations why conducting the interviews. Although the priest agreed to take part in the in-depth interview, he was so uncomfortable

discussing the topic. This showed that the issue of homosexuality in Malawi is still so Taboo. This is exemplified by what the sheikh asserted (quote number four regarding the researcher's interest in the topic) above citing that if the researcher is an advocate of same-sex relationships he "must stop and repent".

After the priest was asked about his fellow priests who state that same sex relationships are fine, he reacted angrily. He cited that the priests who come up with such assertions are "false men" of God (Interview, Priest, 14.02.2012). This shows that there is a difference of opinion in views on same-sex relationships even within the Christian church. When the leaders were asked if they preached in church against same-sex relations, they both confirmed that they preached against homosexuality. They cited that in early years of their careers as men who spread the word God, it was not necessary to preach against same-sex relations because it was unheard of in Malawian society (Interview, Priest, 14.02.2012). But after the arrest of the gay couple in 2009 they thought it became necessary to preach against it because the issue was now in the public domain. The preaching against homosexuality in the churches and mosques raises an important question. Could the preaching have contributed in influencing people to condemn same-sex relationships? Malawi is a highly religious nation. Christianity is the most dominant religion seconded by Islam. So it could perhaps be a possibility that the religious leaders might have had an influence in shaping the people's attitudes.

Adamczyk (2009) has also postulated that the religious culture of a nation may shape people attitudes (See Chapter two). For instance he gives an example that the existence of severe penalties, including death, for people found guilty of homosexual acts in many Muslim nations suggests that religious authorities in these countries maybe particularly likely to interpret religious precepts as proscribing homosexuality (Hellie, 2004 cited by Adamczyk, 2009). He further says that if the religious context is more disapproving of homosexuality in Muslim nations, then anti-homosexual sentiment may be disseminated through public discourse, public institutions, legal codes and social norms. Malawi is a Christian dominated country but has however a significant population of Muslims. Could the attitudes the Malawian Muslims have be a result of the religious culture in the Malawian context?

### 4.3 The influence of Culture: Is Homosexuality a western phenomenon?

The former Malawian president Bingu wa Mutharika repeatedly stated that homosexuality is a practice that should not be accepted in Malawian society. He cited that it is a practice that came from the west and it is alien to Malawian society. Several senior traditional leaders also postulated the same. To establish the views on what some traditional leaders thought on same-sex relationships, the researcher organized a focus group discussion. Culture was the centre of debate in the discussion. Below are some of the major points (quotes) that the traditional leaders expressed.

1. *“This is not how we were taught by our parents to live. This is not part of our culture. These are things coming from the white people” (focus group discussion, 13.02.2012)*
2. *These people are imitating bad behaviour from Azungu (white people). They are getting stupid things that will not even benefit them in any way. (focus group discussion, 13.02.2012)*
3. *Tionge Chimbalanga and Steven Monjeza (the arrested gay couple) are bringing shame to Malawi. They need to be counseled. That is not what they were taught by their guardians when they were growing up. They are very stupid. (Focus group discussion, 13.02.2012).*
4. *These young people of today are doing what they are watching on TV. The Malawian government should sensor some things on TV. I have always said that tv programs like “big brother” (a reality TV show) should be banned. These programs are what are corrupting people’s minds. (focus group discussion, 13.02.2012)*

The first major point one has to note is that all the traditional leaders that participated in the focus group discussion agreed that same-sex relationships are alien to Malawian culture. They stated that if they were not alien, same-sex relationships would not have an issue and would have been legal. The traditional leaders were also all in agreement that same-sex relationships originated from the west (see quotation number two above). They said that when Malawian children are growing up they learn that a relationship is between a man and a woman not otherwise (Focus group discussion, 13.02.2012). One traditional leader stated that if same-sex relationships were normal in Malawi after the arrest of the couple a lot of Malawians would have

condemned the government and supported the couple. He said the lack of support simply signifies that Malawians cannot accept same-sex relationships (focus group discussion, 13.02.2012).

Based on the statements above it is evident that traditional Malawian customs condemn same-sex relationships. Most people growing up in the Malawian traditional setting are most likely to be resistant to same sex-relationships because their mindsets are trained to object to such notions from a young age. If most Malawians grow up in a religious and traditional culture that condemns same-sex relationships then it could follow that they are bound to have homophobic attitudes. This is because same-sex relations would not appear normal to them. This is why it was stated earlier that the issue of homosexuality is still taboo in Malawi. In the first chapter it was also stated that after the issue of homosexuality took centre stage in the media, the Malawian government banned all civil servants from commenting on the matter (CEDEP and CHRR, 2011).

There was also a general consensus that the media (Television in particular) is responsible for the increased number of homosexuals in Malawi. One traditional leader stated that because of the advent of technology, people can watch other people's cultures on television (Interview, 13.02.2012). He said as a result of this it has led some people into engaging in same-sex relationships. The media in this case is regarded as one of the factors that have led to increased cases of same-sex relationships in Malawi. However, one has to understand that culture is a very "fragile phenomenon" that is not static. It changes with time. For instance a change in dressing over the years has demonstrated that culture can change. Similarly, because of globalization, urbanization and technology it is easy for people to learn different cultures across the globe. So if for instance same-sex relationships were not part of Malawian culture in the 50's or 60's, is it automatic that they are non-existent in Malawian society now?

#### **4.4 Relating the findings to Human rights**

Because the research falls in the field "Human rights practice" it is imperative to discuss some of the findings in relation to human rights. There are a number of participants who said that discriminating against homosexuals is a violation of their human rights. The staff of CEDEP were interviewed to establish a number of views as regards the status of LGBT issues in Malawi.



This section will discuss what the respondents said. Below are the exact quotes that highlight the major points that were raised in the interviews.

1. *Criminalizing homosexuality is a gross violation of the rights of the victims. It violates their right to privacy, dignity and in some instances health (Interview , CEDEP-official, 08.03.2012)*
2. *The Malawian constitution clearly says that no one should be discriminated against based on gender, sex, religion or ethnicity. So why is the Malawian government still maintaining the old colonial laws that promote discrimination based on sexual orientation? I don't understand it. (Interview, CEDEP-official, 08.03.2012)*
3. *Malawi is party to a number of International Legal Instruments that object to discrimination. As a member of these instruments it is bound to them hence should respect the laws. But I don't understand why the Malawian government keeps maintaining the old colonial laws when they are not in conformity with international law. (Interview, CEDEP-official, 08.03.2012)*
4. *"All peoples' rights must be respected. The government violated the rights of the gay couple that was arrested in many ways. Those people were tortured" (Interview, CEDEP-official, 08.03.2012)*
5. *"Other human rights NGOs who do not promote gay rights are like that because they are headed by people who also object to same-sex relationships" (interview, CEDEP-official, 08.03.2012)*

In addition to the above, the researcher observed that a number of international human rights organizations (for instance Human Rights Watch and Amnesty International) also have stated on a number of occasions that laws that discriminate against people on the basis of their sexual orientation violate a number of human rights. Amnesty publicly condemned the Malawian government after the arrest of the couple (Amnesty international, 2010).

The CEDEP staff pointed out a number of issues with regards to human rights. They said that the criminalization of homosexuality violates a number of people's rights and also violates the constitution of Malawi which is the supreme law of the land. Malawi has a very progressive constitution that puts human rights as a pillar in governance and exercise of power by the State (CHRR, 2011). The constitution emphasizes that all Malawians must respect the laws of the land. In the context of human rights, the preamble of the Constitution of Malawi cognizes the

“sanctity of human life” and “private consciences” and that there will always be “constitutional order” (CEDEP and CHRR, 2011). Section 5 of the Constitution in fact states that “any act of Government or any law that is inconsistent with the provisions of this Constitution shall, to extent of such inconsistency, be invalid” (CEDEP and CHRR, 2011). This raises the question whether the government of Malawi should legalize same-sex relationships or not because of the violation of the constitution. It was observed by the researcher that one prominent member of an established human rights NGO quit his post due to the fact that his bosses (who happened to be donors) asked him to take a leading role in promoting gay rights. As stated by a CEDEP official (see quote number 5) human rights NGO officials are also partly to blame for the lack of progress on the promotion of gay rights in the country.

One CEDEP official also opined that the criminalization of same-sex relationships is also a violation of international law (08.03.2012). Malawi is party to a number of international legal instruments. Malawi signed and ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Covenant on Elimination of All Forms of Discrimination Against Women (CEDAW) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention Against Torture), Convention on the Rights of the Child (CRC), the Convention on the Elimination of Racial Discrimination (CERD), and the Convention on the Rights of Persons with Disabilities (CEDEP, 2011). All these international instruments condemn discrimination on grounds such as sex, race, and gender. This explains why the CEDEP officials and the international community stipulate that Malawi is in violation of international law if it does not legalize homosexuality.

According to the baseline study by CEDEP and according to what the CEDEP staff stated in the interviews, the rights that are violated are the right to non-discrimination, human dignity, privacy, and health among others (See chapter two). CEDEP (2011) asserts that in as much as the limitation of rights is prescribed in the law, it has the effect of negating the essence of the rights in question, with the probable result of the subjection to discrimination of the concerned category of persons, the arbitrary interference with, or intrusion into their privacy, denial of their right to health, as well as human dignity. This should be compared to a law that applies to

persons with a heterosexual orientation that for instance restricts sexual conduct between heterosexuals in public. On its face, this is a limitation of rights, but one that does not negate the essence of the rights in question (CEDEP and CHRR report, 2011).

Another issue that was raised by the CEDEP staff was that the government violated the rights of the victims that were arrested in 2009 (Interview, 08.03.2012). For the state to prove its case against the gay couple (Steven Monjeza and Tionge Chimbanga), they were subjected to forcible anal medical tests to establish if they had had sex or not. From a human rights point of view it could be argued that the couple may have been tortured because they did not willingly participate in the test. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment regards forced medical examinations as torture (Cited by Amnesty International, 2010). Dr. Vincent Iacopino, Senior Medical Advisor for Physicians for Human Rights and one of the principal drafters of UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) agrees that “forensic anal examinations have no value, whatsoever, in identifying consensual anal intercourse” (Amnesty, 2010). He said such a test is only useful when the sex is non-consensual and when there are signs of some internal injuries. The 1975 Tokyo Declaration of the World Medical Association also prohibits physicians from being in any way involved in the practice of torture or other forms of cruel, inhuman or degrading treatment (Amnesty, 2010). According to the Principles of Medical Ethics Adopted by General Assembly resolution 37/194 of 18 December 1982, no health personnel may “engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment (UN General Assembly 1982). The only role that medical persons have to play is to improve the physical and mental health of the detainees. So this leaves us with the dilemma whether an absolute prohibition of torture is realistic since in the case above the only way for the state to prove its case was to force the anal medical examinations on the men. However, it is improbable that the Malawian Government can admit the use of torture. This again raises an important question. To what extent does the Malawian government violate the Malawian constitution and international law?

## 4.5 Politics

The state is the most important stakeholder in the implementation of human rights. For any right to be implemented it requires the good will of the state. Hence for same-sex relationships to be legalized in Malawi, the state has a huge role to play. Since the arrest of the gay couple, the Malawian government has maintained its view that homosexuality should not be legalized. To find out the current stance of the government the researcher as observed above interviewed a politician who is a member of the ruling political party. Below are the major points that were put forward during the interview. Observations that the researcher made are also discussed and analyzed.

1. *Malawi is a Sovereign State. So donors cannot force us to implement policies that we do not want. They can stay with their money we don't really mind (Interview, politician, 22.02.2012).*
2. *The governments stand will remain the same. We will not bow to any one's demand. You know yourself very well that after the arrest of those stupid people (in reference to the gay couple) the government even passed a law that further criminalizes those ridiculous relationships (interview, politician, 22.02.2012)*
3. *The government has implemented the Zero- Deficit budget hence we don't need donor aid so much like we needed it before (interview, politician, 22.02.2012)*

The major points that were stated by the politician are the ones quoted above. The first point he raised about state sovereignty is a common reason that states often use to defend themselves from external criticism. The United Nations promotes state sovereignty and territorial integrity of the states. This means all states are independent and can make their own decisions. This for a long time has been a controversial issue because states use "sovereignty" to defend themselves from the international community after committing gross human rights violations. This raises another important question. Should Malawi not listen to the international community solely because it is a sovereign state?

In relation to the issue of sovereign power of the state, the politician further stated that after the arrest of the gay couple (and after the state was condemned by the international community including donors) the state enacted new laws on top of the already existing ones that further

criminalize homosexuality (interview, politician, 22.02.2012). This simply shows how serious the Malawian government is not willing to accept same-sex relationships in Malawi. After he was asked about the aid (donor aid given to Malawi by Britain and the United States in Particular) Malawi risks losing because of the government's actions (of continual criminalization of same-sex relationships) he stated that Malawi was ready to face the consequences. However, in the course of writing this paper it was observed by the researcher that the government accepted funding from donors to conduct surveys on LGBT issues. The researcher observed that a number of human rights commentators criticized the government for accepting the donor money citing that its actions were double standard. One would question why the government on one hand is busy condemning homosexuality and on the other it is secretly receiving money from donors to conduct research on LGBT issues.

It was observed that the donors found it tough to convince and coerce the Malawian government to legalize homosexuality even after using aid as a condition. Perhaps, an alternative way that will not be deemed as undermining the sovereignty of the Malawian state could be pursued. The question that one would ask is whether it is worthy to lose the much needed aid because of not legalizing homosexuality.

#### **4.6 The influence of the media on homophobic attitudes**

It was discovered that the media also plays a pivotal role in shaping people's attitudes on same-sex relationships. All the participants who were interviewed in this study were asked to tell the researcher how they hear about LGBT issues in Malawi. Below are what some of them said from the interviews and focus group discussion.

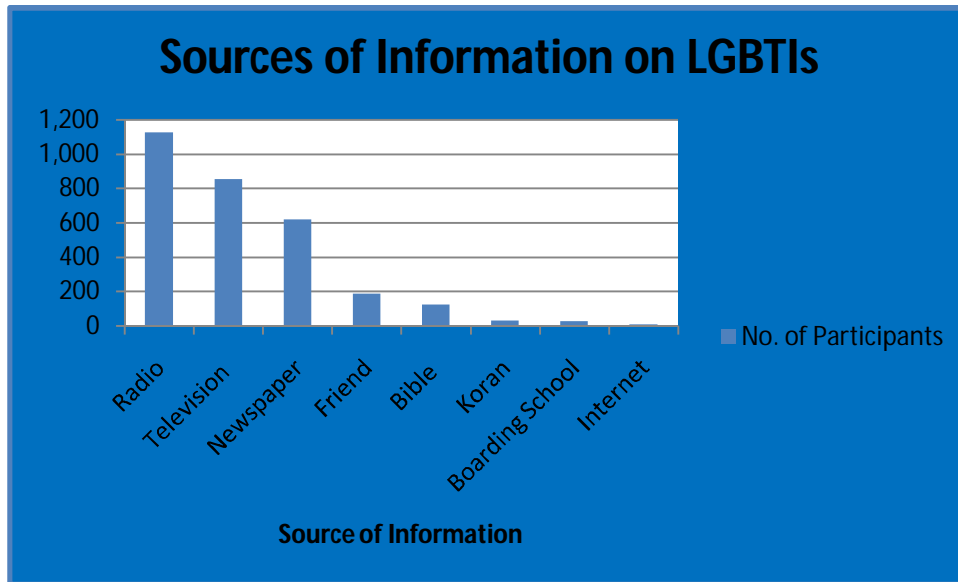
- 1. I heard about Tiwonge Monjeza and Steven Monjeza on MBC radio one (focus group discussion, 13.02.2012).*
- 2. I first heard about the gay issues after I watching news on MBC TV (focus group discussion, 13.02.2012)*
- 3. I heard about the same-sex relationships in Malawi after reading the newspaper and later on the radio when religious leaders and politicians were condemning the arrested couple. (Interview, 14.02.2012)*
- 4. I heard about same-sex relationships on the radio (Interview, 14.02.2012)*

5. *I heard it on the radio when Bingu (the former president) was telling the nation that the arrested gay couple was a disgrace to Malawians. (interview, 22.02.2012)*

After the interviews the researcher observed that radio was a major source of information on LGBT issues in Malawi. Malawi has a number of radio stations. The state controlled Malawi Broadcasting Corporation (MBC) is the most predominant radio station and has a lot of listeners especially in the rural areas. This is because it is the oldest station and has quite a large coverage area. The Malawian only Television channel is also fully controlled by the state. There were also other sources of information which included Newspapers, friends, schools and the internet. The researcher noted that all that was heard in the media on LGBT issues in Malawi was condemnation of the arrested couple in 2009. The government using the MBC radio and Television, at many instances stated that homosexuality is not part of Malawian culture. Religious leaders from different denominations also spoke on this radio station (MBC) condemning homosexuality. The question one would ask is whether MBC had any significant bearing in influencing the attitudes of people on same-sex relationships? If the coverage of the same-sex relationships saga was done in a neutral way would it be in any way different as far as the levels of homophobia are concerned?

Another interesting aspect is that one of the traditional leaders blamed the media (television especially) for the spread of homosexuality. In this case the media is said to be used as a tool of spreading the practice of homosexuality and at the same time a tool that spreads homophobia. This shows that the media has a huge influence could have a huge influence on same sex relationships.

In addition to these findings the baseline study by CEDEP also illustrated that radio was the major source of information on LGBT issues. Below is a graph illustrating the medium people use to hear about LGBT issues in Malawi as revealed by CEDEP.



*Figure 1 showing statistics on sources of information in the study by CEDEP (2011)*

As also observed by CEDEP the Malawian government used its mouth piece (MBC) to condemn homosexuality and hence there is a high probability that the government through its channel shaped people’s views on LGBT issues in Malawi. This confirms the initial thought that the researcher had that the media could be a huge factor that shapes people’s attitudes in Malawi.

## CHAPTER FIVE

### 5.0 CONCLUSION AND RECOMMENDATIONS

There have been a number of conclusions that have been drawn from the study. Before highlighting them, this section will summarize in brief what the whole project has presented so far. The *first chapter* was the introductory part of the paper that outlined the main objectives of the study and its relevance in the world today and to Malawi in particular. Reasons why it was justified to carry out this study were also laid out in this chapter. The *second chapter* was the literature review. Debates that have been put forward by a number of scholars and other commentators on the issue of sexual rights and homosexuality were discussed. Data on homosexuality in Malawi was also presented in this section though it was scanty due to its unavailability. Some of the debates in this section were used to analyze the data in later chapters. It was noted that culture, religion and politics play a pivotal role on the status of LGBT issues in the world. The *third chapter* discussed the methodology that was used to carry out this research. A number of research techniques were used and the particular reasons why the techniques were used were also discussed. Ethical issues and all the constraints that were met by the researcher were also discussed. *Chapter four* discussed and analyzed the findings of the study. This is where the major arguments of the paper were put forward and discussed. This *chapter (five)* will conclude the study and recommend a number of things that could be implemented to help overcome the dilemma on whether to legalize homosexuality in Malawi or not.

Based on the findings above, one can conclude that religion, culture, the media and politics are the major factors that shape the attitudes of people as far as same-sex relationships are concerned in Malawi. The researcher observed that for homosexuality to be legalized in Malawi all sectors of Malawian society must participate. It will not be easy to change people's attitudes on same-sex relationships because all the major stakeholders in the saga are against legalizing the practice. NGOs like CEDEP do not have much influence because of the lack of support from the other stakeholders. In a nutshell, the researcher thinks there is no rational justification for the criminalization of homosexuality in Malawi. The assertion has been arrived at after a thorough analysis of the arguments that were put forward by people who object the practice. Below are some of the points that the researcher recommends.



## **5.1 Government Must Change Some of Its Policies**

The first recommendation is that the Malawian government should adopt new laws that will address the current needs of people. The penal code that criminalizes homosexuality in Malawi is part of the old British colonial laws that were introduced in the colonial era. It is imperative for the government of Malawi to change its stand and embrace change by repealing the old laws. Forsythe states that the articulation of human rights this century has been the explication of rights which were formerly unacknowledged (and perhaps formerly implicit), including the rights of life, dignity, freedom of expression, and so forth, leading to the affirmation of the individual and protection of the human being (Forsythe, 1983 cited by Offord and Cantrell, 2001). “Since the inception of the Universal Declaration of Human Rights in 1948, there has been a process of clarification and explication of rights where deemed necessary and important to do so. Thus, the creation of the Convention on the Rights of the Child, the Convention on the Political Rights of Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Forms of Punishment, and so forth are examples of this process of human rights articulation and evolution. Understandings of these rights underscore the dynamic nature of human rights. They have been understood as the world has changed” (Heinze, 1995: 87 cited by Offord and Cantrell, 2001). So the Malawian government needs to adjust to this change. Laws must be up to date to address people’s current problems.

Malawi also has a number of development partners (donors) who work hand in hand with the government in various projects. The Malawian government depends heavily on support from outside to supplement its national budget. Malawi is given aid after fulfilling a number of conditions which include bolstering a good human rights record. The criminalization of homosexuality dented Malawi’s human rights record among other things. The United States government threatened to cut aid to countries that criminalize homosexuality. So for the interest of the whole Malawian population one would recommend that the state should abandon the old colonial laws because losing aid will have a significant negative impact on Malawi’s fragile economy.

The Malawian government as stated above also used the Malawi Broadcasting Corporation (MBC) as its mouth piece in condemning same-sex relationships. This had a significant impact

because a lot of people especially in the rural areas were made aware of the LGBT issues in Malawi through radio. Now the government should take advantage and use the radio to carry out human rights education. This will help reduce the levels of homophobia.

Lastly, because of the state sponsored homophobia homosexuals in Malawi are not part of the health policies undertaken by government to curb the spread of HIV/AIDS. If the Malawian government is to make any meaningful progress in the fight against HIV/AIDS, the researcher recommends that homosexuals must also be part government's health programmes.

## **5.2 Need for more Research and the Need to Help NGOs**

As stated above one of the major problems in writing this paper was that there is not much data on LGBT issues in Malawi. Data is so difficult to find. To help end the problem academics, the government and also NGOs must be encouraged to carry out more research to shed more light in this area by gaining new knowledge. There is for example no data on the population of homosexuals in the country. This is partly due to the reason that they cannot come out in the open because of the legal status of homosexuality. So if government legalized homosexuality it will definitely lead to more availability of different types of data.

It was also worth noting that the only stakeholders that are promoting the rights of homosexuals in Malawi are NGOs namely CEDEP and CHRR. There are even contrasting views among other NGOs whether to support homosexuality or not. It is impossible for CHRR and CEDEP to achieve anything if they do not work hand in hand with other stakeholders like the Malawian government and other NGOs. The paper recommends that all these stakeholders mentioned must work together to achieve the common goal of eradicating discrimination. CEDEP also noted that organizations conducting LGBT programming in the country would only succeed in their advocacy and implementation of their activities if their focus is tilted towards human rights education (CEDEP, 2011).

## **5.3 Promotion of Human rights Education**

The other recommendation on part of government is that it should promote civic education on human rights issues in the country including LGBT issues. This is because the researcher observed that in the field research that was conducted, the few people that tolerated same-sex

relationships cited human rights as a reason for them wanting the legalization of homosexuality. Thus, this means that changes in the perceptions or attitudes of people on same sex issues has to come through human rights education. This will in turn enable more people understand the essence of respecting human rights and could significantly reduce discrimination.

*Word Count: 14,387 (Chapter one to Chapter five)*

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## **APPENDICES**

### **Appendix One: Interview Guide**

Below is a list of questions that were used by the researcher in the interviews to obtain data from the participants. The list is not exhaustive as some questions arose depending on the circumstances while conducting the interviews. This is just a guideline that was used:

#### **CEDEP Staff:**

1. What are your views on the criminalization of same sex relationships in Malawi?
2. Why do you think same-sex relationships should be legalized?
3. As CEDEP, what is your institution doing in the promotion of gay rights?
4. Do you have partner institutions that you are working in your quest to eradicate homophobia or discrimination based on ones sex in Malawi?
5. What do you think should be the way forward for Malawi as far as sexual rights are concerned?
6. Can you tell me more about your baseline study on LGBTI issues in Malawi?
7. Through what channel of communication did you hear about the Tionge Chimbanga and Steven Monjeza case?

#### **The Politician**

1. What is your general view concerning the debate on same-sex relationships in Malawi?
2. Why does the government not want to repeal the old laws that criminalize homosexuality?
3. Why did the government ban all the civil servants from commenting on the arrest of the gay couple in 2010?
4. Don't you think the criminalization of homosexuality violates a number of human rights?
5. Are you not concerned that the international community is condemning governments' actions and that it could lead to the loss of donor aid?

6. What do you think the future holds for people involved in same-sex relationships in Malawi?

## **Religious Leaders**

### **The Sheikh (Muslim Leader)**

1. What is your view on same-sex relationships?
2. Did you hear about the arrested couple in 2009? And if yes how did you get the news?
3. If you heard about the arrest of the gay couple what was your reaction as a religious man?
4. What does Islam say on same-sex relations?
5. What do you think should be the way forward as far as same-sex relationships are concerned in Malawi?
6. What role do you think religious leaders like you should play to help resolve this crisis?

### **The Priest (Christian Leader)**

1. What is your view on same-sex relationships?
2. Did you hear about the arrested couple in 2009? And if yes how did you get the news?
3. If you heard about the arrest what was your reaction as a religious leader?
4. What does Christianity say on same-sex relationships?
5. What do you think should be the way forward as far as same-sex relationships are concerned in Malawi?
6. What role do you think religious leaders like should play to help resolve this crisis?

## **Appendix Two: Focus Group Discussion**

### **Traditional leaders**

1. What are your views on same-sex relationships?
2. Did you hear about the arrested couple in 2009? And how did you hear about it?
3. As traditional leaders what was your reaction after the arrest of the couple? Did you do anything?
4. Why do you say same-sex relationships are against Malawian customs? Can you elaborate please?
5. So what do you think should be the way forward to resolve the conflict?