

Chapter 5

How sociology enriches human rights: The case study of Malawi's first openly-gay couple

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Summary

For a long time the study and practice of human rights has been dominated mainly by law, with politics and ethics being other fields of major influence. But human rights is not a stand-alone field of study; it needs to be approached from a multi-disciplinary perspective. Sociology is one discipline that enriches the study of human rights by showing how rights are constructed, institutionalised and violated. This paper attempts to show how sociology adds value to human rights by way of a case study. The case study details the furore that surrounded the coming in the open of Malawi's first gay couple. Events in the aftermath of the jailing and pardoning of the two men show how gay rights are socially constructed in a context of a struggle between Malawian authorities who oppose such rights, on the one hand, and donor countries, who call for acceptance of homosexuals, on the other. The paper concludes that rights for gays may be institutionalised in Malawi considering the country's dependence on donor aid, but that the institutionalisation should be in a less oppositional and threatening manner for the homophobic attitude of the Malawian authorities to be ameliorated.

1 Introduction

The field of sociology has not been as dominant as law and politics in the human rights discourse. However, sociology enhances the understanding of the multi-disciplinary nature of human rights by focusing on the institutionalisation of rights as well as how institutions help violate human

rights. The sociological approach also helps to shed light on social processes through which rights are constructed and violated in specific social situations. A case study of the furore that marked the coming into the open of a gay couple in Malawi in the year 2009 illustrates well how sociology is not dominant in the practice and teaching of human rights. The case study also depicts the idea of construction of rights and their violation and how this enriches the teaching and practice of human rights.

The Malawi society is in general deemed to be conservative in outlook. Therefore the 'outing' of the duo, Steven Monjeza and Tiwonge Chimbalanga, presented an unprecedented challenge not only to the local cultural systems, but also to human rights teaching and practice. The local praxis of human rights was challenged as the Malawi government and the donor community tussled on the area of promoting and protecting minority rights. The United Nations (UN) Secretary-General, Ban Ki Moon, spoke of the 'archaic' nature of the Malawian law on a visit to the Southern African country, and soon thereafter the authorities 'pardoned' the gay couple after initially handing them a 14-year jail term.

This paper reflects on the social construction of homosexuality in Malawi and the challenges posed to human rights, taking into consideration the clash of traditionalists and modernists. The author takes the position that the social process of how rights are constructed was largely ignored in the issue of the gay couple. There needs to be an in-depth analysis of such issues from a sociological perspective to enrich the understanding, teaching and practice of human rights as well as the promotion and protection of the same. The paper also argues that the over-emphasis of politics in the case of Monjeza and Chimbalanga has contributed to the issue being swept under the carpet and to the issue being largely forgotten, just over a year later.

2 Human rights: Different meanings and their inter-disciplinary nature

The meaning of human rights could in some ways be viewed as akin to the parable of the five blind Buddhist scholars and their description of an elephant.¹ Each of the scholars gave an impression of what an elephant was

¹ See the ancient parable of five blind Buddhist scholars in MB Steger *Globalisation: A very short introduction* (2003) 13-14.

according to the body part of the animal they felt. For example, the man that touched its trunk said that an elephant was like a 'lively snake', and the scholar who got hold of its tail described an elephant as a 'large flexible brush'. In other words, there are a number of factors, such as belief systems and values, that determine the meaning of human rights to a person or a group of people.

In a simple but poignant phrase, De Feyter states that 'human rights mean different things to different people'.² This remark reflects the universalism versus cultural relativism debate in human rights, just as it signifies that two individuals within one culture may interpret human rights differently.

On my way to a lecture room one day, I witnessed an incident that I thought was a good example of a clash of the interpretation of human rights. A security guard accosted a woman selling boiled ground nuts on campus, and he told her to leave the college premises because she was trespassing and that vending was not allowed. The woman resisted the call and an argument ensued, ending in the guard upsetting the basket containing the commodity. The woman burst into tears. Obviously she had to make ends meet and had the right to economic activity found in section 29 of the Malawian Constitution.³ At the same time, the security official could have argued that he was simply following section 21 of the same Constitution that speaks of the right to privacy.

It is generally agreed that law, politics and ethics have long dominated the study and practice of human rights. This is hardly surprising, considering that international law has been crucial in shaping human rights and in essence to date, politicians have had much to say about human records in specific countries, especially donor-dependent developing nations. To varying degrees, aid to poor countries is dependent on a good human rights record, and as such governments strive as much as possible to create an impression that they are protecting and promoting human rights. Some schools of thought suggest that human rights reflect ethical values in that they indicate right or wrong behaviour in a society and how people ought to treat each another.

However, over the years, events have proved that human rights is not a 'stand-alone' field in terms of study and practice. Development and globalisation have removed the dominance of politics, law and ethics in

² K de Feyter *Human rights: Social justice in the age of the market* (2005) 1.

³ Malawi Constitution at <http://www.sdn.org.mw/constitut/chapter4.html> (accessed 19 May 2011).

human rights study and practice. De Feyter suggests that human rights violations in the contemporary world result from not just a single entity but a variety of actors and that globalisation has led to newer forms of violations, such as pollution and unfair labour practices.⁴ Human rights are a variable that is changing, and the growth of the field is connected to the transformation of societies or societal development.⁵ These changes indicate that human rights should be studied and practised from an inter-disciplinary approach, to allow the new dynamics at play in a globalised world to be accounted for.⁶ In this regard, the incorporation of fields such as sociology helps to understand human rights both in practice and study.

3 The importance of sociology to human rights

Unlike other fields, such as law and international relations, sociology has in the past not engaged in great depth with human rights. However, a sociological approach is important because it shows social processes through which human rights are constructed and violated in particular social situations.⁷ Of particular note is the social construction perspective which is concerned about how 'human rights are constructed – made real ... and given meaning through social practices'.⁸ Sociology also illuminates how human rights violations are institutionalised and normalised through concepts such as state violence.⁹ Sociology challenges us to consider the effect of the collective on individuals, which is significant when studying the importance of sociology for human rights in the context of individual rights that are perceived to be a preoccupation of the 'Western' world versus group or collective rights that are mainly identified with African societies.¹⁰ The African outlook is seen as cautious in focusing on the individual rather than the group or on rights without duties, because for someone to enjoy their rights, another person should have a duty to enable the fulfilment of

⁴ De Feyter (n 2 above).

⁵ N Bobbio *The age of rights* (1996).

⁶ As above.

⁷ Darren O'Byrne's lecture at Roehampton University, January 2008.

⁸ As above.

⁹ As above.

¹⁰ TO Pierce 'Human rights and sociology: Some observations from Africa' (2001) 48 *Social Problems* 54.

these rights.¹¹

Sociology's lack of engagement with human rights is due to the nature of sociology itself. Sociologists are concerned with studying the specific forms of social life in *particular* societies, making their wariness of the *universalism* attached to human rights understandable.¹² Turner noted that classical social theory was reluctant to engage in a normative analysis of legal institutions.¹³ Influential figures such as Marx seemed to reject the notion of human rights, noting that they only served as an instrument of hiding deep social and economic inequalities.¹⁴

The point of interface between sociology and human rights emerged through a concept called citizenship which in essence was a collection of individual rights granted by a state to its citizens.¹⁵ This posed a lesser challenge to sociologists because citizenship seemed devoid of universalism.¹⁶ But it was then recognised that citizenship is not enough for an analysis of human rights from a perspective of sociology because of emerging issues such as globalisation, refugees and migrant workers. Reflecting on the works of Turner, Short suggests that human rights can be understood from a sociological point of view by the need to protect vulnerable human beings through social institutions, but adds that the institutions pose a threat to the very people in need of protection.¹⁷

Short claims that 'the social and legal institutionalisation of human rights is the predominant modern attempt to resolve this dilemma that is inherent in modern societies'.¹⁸ Short adds that Turner deploys¹⁹

sociological theory to explore the moral basis of a universalist doctrine of human rights and proposes that a shared experience of 'human frailty' and the 'vulnerability of the human body' provides a common ground ... Additionally he [Turner] argues that we need universal human rights

¹¹ Pierce (n 10 above) 53.

¹² P Hynes *et al* 'Sociology and human rights: Confrontations, evasions and new engagements' (2010) 14 *The International Journal of Human Rights* 810.

¹³ D Short 'Sociological and anthropological approaches' in M Goodhart (ed) *Human rights: Politics and practice* (2009) 96.

¹⁴ Short (n 13 above) 97.

¹⁵ As above.

¹⁶ As above.

¹⁷ As above.

¹⁸ Short (n 13 above) 97-98.

¹⁹ Short (n 13 above) 98.

due to the 'precariousness' of 'social institutions', which 'stand in a fateful relationship to human purposes, because they contradict their origins'.

Turner's contribution was followed by Waters who advocated a social constructionist approach to human rights, while criticising the path taken by Turner as being foundationalist.²⁰ Waters posited social constructionism in human rights theory, arguing that human rights were institutions that were specific to cultural and historical situations.²¹ In his view, the social construction approach²²

emphasises the socially created nature of social life, and accordingly views the construction of universal human rights as the product of the balance of power between political interests at a particular point in history. The rise of human rights cannot be explained simply through notions of human vulnerability, institutional threats, and collective sympathy, but rather by the assertion of powerful class interests.

In other words, rights are shaped as a by-product of interaction by various actors with a range of interests, including power and influence, at stake. For example, it is suggested that the field of human rights grew in the aftermath of World War II as the victorious sides sought to somehow consolidate their interests at the expense of those that had lost.²³ Social constructionism provides the tools for an analysis of rights in terms of their social life, who they serve and how they function.²⁴ This approach should take into account the actions of various social actors involved in creating rights and these include social movements that impede or facilitate change.²⁵

Power is recognised as being crucial in the arena of human rights, and Freeman is regarded as having been influential in illuminating the role of power in the social process of the institutionalisation of rights.²⁶ If social construction of rights involves interests, then power should be pivotal, especially if we consider the development of human rights in the wake of

²⁰ As above.

²¹ Hynes *et al* (n 12 above) 816.

²² Short (n 13 above) 98.

²³ As above.

²⁴ Short (n 13 above) 98-99.

²⁵ Short (n 13 above) 99.

²⁶ Short (n 13 above) 99.

the cited example of the outcome of World War II. The balance of power was in the hands of the triumphant allied forces who, as the school of thought suggests, went on to shape rights to protect their interests and not those of their opponents.

On the point of the institutionalisation of human rights, the net result is a form of rights that does not upset the *status quo* in terms of power balance. Freeman observes as follows:²⁷

The sociological point is not that human rights should never be institutionalised, but rather that institutionalisation is a social process, involving power, and that it should be analysed and not assumed to be beneficial.

On the contribution from sociology to the overall study of human rights, Freeman notes that some approaches of sociology could help shed light on how problems related to human rights are understood in different cultural contexts.²⁸

Freeman is also concerned about too much focus on the UN system in the practice of human rights while ignoring the role of the World Bank, United States foreign policy and other influential global entities in construction and violation of human rights.²⁹ This point reflects the dominance of politics and law in the practice of human rights, as the UN is the hub of global politics and enforcement concerning human rights.

Societal structures also contribute to a violation of rights.³⁰ Societal structures are 'ordered inter-relationships between elements of society such as the different kinships, religious, economic, political ... institutions of society'.³¹ These structures, to reiterate, help violate human rights and also restrict the institutionalisation of rights.³²

From the account above, it is clear that human rights need a sociological approach because of the social processes involved in the shaping of rights, the social actors involved in their framing and the power relations that are concerned in the course of the action. The absence of sociology creates a gap, as many scholars have noted, in the realisation of how human rights obtain a sort of social life.

²⁷ M Freeman *Human rights: An interdisciplinary approach* (2002) 85.

²⁸ Freeman (n 27 above) 77.

²⁹ Short (n 13 above) 99.

³⁰ Short (n 13 above) 100.

³¹ As above.

³² As above.

However, the flipside of sociology's contribution is that it may be used as a means of promoting too much focus on culture with its attendant challenges in the form of abuses that are justified by perpetrators as part of their identity. This is what scholar Donnelly alludes to as 'strong cultural relativism'.³³ Donnelly says that under this school of thought 'culture is the principle source of the validity of a moral right or rule'.³⁴

In the subsequent section of this paper, I outline the case of Malawi's first ever gay couple to come out in the open. I link the discussion of the case to the framework of the importance of sociology outlined above to show that in some scenarios law and politics still dominate the discourse of human rights. The Malawian case study also emphasises the importance of sociology in the study and practice of human rights. Furthermore, the discussion reveals the importance of the social construction of rights in connection with homosexuality in the Malawian context.

4 The case of Steven Monjeza and Tiwonge Chimbalanga

Malawian society can be said to be conservative in general, with a large portion of the population holding Christian beliefs. The conservative outlook may not be solely as a result of traditional beliefs and values, but is probably also due to the autocratic rule the country experienced under founding President Dr Kamuzu Banda. Dr Banda ruled Malawi with an iron fist, establishing an environment in which dissent was viewed with suspicion. His ruling Malawi Congress Party was founded on four 'cornerstones' that every citizen had to abide by, namely, unity, loyalty, obedience and discipline. These tenets called for total and unquestioning allegiance to President Banda. The 30 years Dr Banda ruled Malawi in no small measure contributed to an acquiescent and conformist citizenry. On the cultural front, traditions such as initiation ceremonies, funeral vigils and value for community togetherness, have been and are still cherished.

The majority of Malawians are Christians, with the Roman Catholic Church widely regarded as the biggest denomination, followed by

³³ J Donnelly 'Universal human rights in theory and practice' in L Henkin *et al* (eds) *Human rights* (1999) 107.

³⁴ Donnelly (n 34 above) 107.

Presbyterians. About 20 per cent of people in the country are Moslems.³⁵ The pentecostal and charismatic movement has in the past decade or so grown and its impact has been wide-reaching. Many of the faithful from the 'traditional' churches, such as Catholic and Presbyterian, 'defected to join what is considered as a 'new' church grouping.

Both Christianity and Islam are influential in shaping values and way of life of Malawians, and also influence the country's politics. The Public Affairs Committee is one embodiment of the power of religion in Malawi. This grouping, composed of Christian and Moslem entities, has since the struggle for multi-party democracy in the country in the early 1990s had a big say on issues such as electioneering, good governance and the rule of law.

Within this religious and cultural context, it was hardly surprising that a storm disturbed the relatively quiet waters of Malawi when one of the weeklies in the country, the *Weekend Nation* in its edition of 27 December 2009 carried a story to the effect that two men on the outskirts of the commercial capital, Blantyre, had engaged in a traditional ceremony called *chinkhoswe*.³⁶ The two men, Steven Monjeza (the suitor) and Tiwonge³⁷ Chimbanga (the betrothed), were quickly framed by mainly the media as Malawi's first 'gay couple'. Sentiments by the two that they had been cohabiting for some time led to the general perception that they were a 'sort of family'.

There had been rumours that homosexuality was being practised in Malawi, but never before had there been a coming out of any gay or lesbian persons. The police arrested Monjeza and Chimbanga and charged them with carnal knowledge against the order of nature, consenting to have sexual acts like wife and husband, and indecent practices. Overnight there was a furore that was marked with appeals to the cultural, traditional and religious values of the country not to be undermined. In general, there was condemnation of Monjeza and Chimbanga in the press, religious circles, among traditional leaders and by government officials. However, there was some

³⁵ The estimate is, according to the page on Malawi in the CIA World Factbook, available at <http://www.cia.gov/library/publications/the-world-factbook/geos/mi.html> (accessed 19 May 2011).

³⁶ *Chinkhoswe* is a prenuptial traditional ceremony in Malawi that involves the kith and kin of two people, hitherto between a man and woman. Gifts are exchanged and advice given to the lovers, and in some societies the event is a substitute of exchanging marriage vows in a church. In such a scenario, couples go straight to live together a family after the *chinkhoswe*. *Chinkhoswe* is an open and public ceremony, though some hold it privately in the confines of their homes.

support for the two in the form of two local rights bodies, the Centre for Human Rights and Rehabilitation and the Centre for Development of People.³⁸ The latter in particular, has been more open in advocating for gay rights in Malawi. The prosecution of the duo was also deplored by some international human rights watchdogs, such as Amnesty International, who called for their release and an end to the trial.

The trial of Monjeza and Chimalanga at Blantyre Magistrate's Court was a public event that attracted thousands of curious people. Each court appearance by the pair was marked by booing and jeering from the crowds. After the eventful trial, Magistrate Nyakwawa Usiwa-Usiwa gave his verdict of guilty. In what he called a 'scaring sentence', the two were sentenced to 14 years' imprisonment with hard labour. Nine days later, on 29 May 2010, Monjeza and Chimalanga were out of jail on a presidential pardon. However, President Bingu wa Mutharika intimated that the reprieve was not an indication that he condoned homosexuality as it was against the laws, religion and culture of Malawi.³⁹

Dr Mutharika's move came after a rather unexpected visit to Malawi by the UN Secretary-General, Ban Ki Moon. On his brief visit, Mr Ban addressed the National Assembly in Lilongwe, during which a hint of what was to come was given. The UN chief spoke of the 'archaic' nature of some Malawian laws and said that they needed to be changed, a direct reference to the Penal Code that criminalises homosexual acts.

In essence, the reaction among Malawians to the presidential pardon was confusion as the news was very unexpected. The Malawian government made no secret of its condemnation of homosexuality and strong views emanated from various quarters of the administration, especially countering the international human rights groups that spoke against the trial of Monjeza and Chimalanga. Some people were of the view that President Mutharika's

³⁷ The name has its roots in the northern part of Malawi and it is also spelt as 'Tionge'. Therefore the media in Malawi has used 'Tiwonge' and 'Tionge' interchangeably. For the purpose of this paper, I will use the version of 'Tiwonge'.

³⁸ In an interview with the *Weekend Nation* of 9 April 2011, the Executive Director of CEDEP, Gift Trapence, said: 'Homosexuality is a very natural phenomenon coming from natural human beings ... The human rights discourse has acknowledged the existence of same-sex relationships and it would be unavoidable to talk about human rights and same-sex relationships.'

³⁹ L Price 'The treatment of homosexuality in the Malawian justice system: R v Steven Monjeza Soko and Tiwonge Chimalanga Kachepe' (2010) 10 *African Human Rights Law Journal* 526.

action meant that he was legalising homosexuality.⁴⁰ In general, many Malawians thought Mr Ban had somehow twisted the arm of their government to lead to the change of heart. These sentiments were made in the light of the powerful nature of the UN system and its work in Malawi through agencies such as the United Nations Development Programme (UNDP) and the Joint United Nations Programme on HIV/AIDS (UNAIDS), as well as the world body's connection to donors such as the European Union (EU), who had expressed misgivings about criminalising homosexuality.

The net effect was that people speaking on local radio talk shows and other fora believed that Malawi had agreed to release the imprisoned couple because of a fear of a backlash from donors who give the country aid amounting to 40 per cent of its budget. This left a somewhat sour taste in the mouths of 'traditionalists' like chiefs who felt that cultural values were being eroded because of the country's poverty.

4.1 The aftermath of the Monjeza and Chimbalanga case

This part of the paper mainly shows events that have happened since the gay couple was released following the intervention of the presidential pardon. This section will help later to show the social construction of homosexual rights in Malawi in terms of social actors, the balance of power and structures involved in the process.

One year after the conviction and pardoning of Malawi's first ever openly 'gay couple', the two individuals are hardly mentioned in the media or among the population. It seems that already people have forgotten the furore. However, Steven Monjeza was in the news some months after his much-publicised trial. Interestingly, he was quoted in the local media as saying that the engagement with his 'fiancée', Tiwonge Chimbalanga, had been staged and he had been paid to go through the motions. Monjeza was pictured with a woman and it was claimed the two were in love and that they were going to marry. Monjeza further said that he had 'dumped' Chimbalanga.

The conspiracy theory of the engagement ceremony between Monjeza and Chimbalanga having been a sham has many sides. One angle of the story purports that the event was a diversion to cover up the discovery of

⁴⁰ *Weekend Nation* 31 May 2010. In the same paper, one Amina Kajiya said that there was no need to pardon Monjeza and Chimbalanga because Malawi's culture, laws and religion did not allow homosexuality. 'We Malawians ought to stick to our culture and not just bow down to foreigners for us to get financial support,' Kajiya told the newspaper.

pornographic videos. A newspaper article in the *Daily Times*, written by McDonald Chapalapata, clearly homophobic in tone, noted:⁴¹

Some burglars had broken into the office of an NGO that supports gays in Blantyre and went away with valuables. Police were called in to investigate. In their fact finding, the officers stumbled on a shocking library of videos of men doing you know what with fellow men. Now, as the police were preparing to pounce on the leaders of the NGO also, some chap organised the engagement to divert police attention ... The engagement did have features of something hastily arranged. There were no known invitations sent to relatives. This being the first gay engagement in Malawi, one would have expected all the gays to come together and make a statement in town that they are here to stay.

Chimbalanga was last reported to be on his way to Canada to seek asylum fearing persecution in his home country. Monjeza had a brush with the law again after a court convicted him of robbing a person of a cell phone, and in another incident for stealing a bag of maize. He was given a relatively moderate sentence for these transgressions.

As the media and people of Malawi largely seem to have forgotten the case of Monjeza and Chimbalanga, the debate on minority rights, also referred to as homosexual rights or gay rights, continues. On one side of the debate are some local human rights groups advocating for the rights of homosexuals, some members of the donor community and international rights watchdogs. On the other side of the divide are the government, national media and traditional leaders. The independent media could be said to be caught in the middle of this duel and it seems undecided on which side to belong. Some opinion or commentary articles are homophobic in tone⁴² and yet others seem to be advising caution or tolerance and a sort of debate on gay rights. An article supporting an accommodating stance was carried in the *Weekend Nation*, one of the leading weeklies in Malawi, by its editor, George Kasakula: 'We should not bother ourselves with the sexuality of some people whom we think are abnormal ... They do not physically injure anybody or mean harm to anyone.'⁴³ The same columnist wrote almost a year later:⁴⁴

⁴¹ *Daily Times* 11 April 2011. The article was entitled 'Carrot of gay rights'.

⁴² As above.

⁴³ *Weekend Nation* 3 July 2010.

⁴⁴ *Weekend Nation* 14 May 2011.

Most Malawians find homosexuality abhorrent. My Christian beliefs tell me it is an act that goes against the laws of nature. God destroyed the cities of Sodom and Gomorrah because of this. Sodom gave its name to the abhorrent act the law classifies as sodomy. But it is not my duty to take the moral high ground on this issue. Neither is it for my secular government. This is the duty of churches and mosques, among others.

In general, many Malawians are opposed to homosexuality as seen from reactions in the trial of the Monjeza and Chimbalanga, as well as *vox populi* or comments aired on talk shows on some radio service stations. The government is using the national radio Malawi Broadcasting Corporation (MBC), to advance its opposition to decriminalising homosexuality, and also to appeal to chiefs and religious leaders to speak on the issue knowing that the two sections will support the authorities.

Information Minister Symon Vuwa Kaunda was quoted in a newspaper interview as saying it was better for Malawi to suffer the consequences of rejecting same-sex marriages because the practice 'was against the country's cultural norms.'⁴⁵

MBC, which traditionally is the mouthpiece of the party in government, has been interviewing chiefs on the issue of same-sex marriages.⁴⁶ In one of its opinion segments in April 2011, the radio station alleged that Malawi was facing enemies who 'unfortunately' were its own citizens.⁴⁷ This was with reference to the local NGOs that were fighting for gay rights, also known as minority rights or homosexual rights. Part of the opinion read:⁴⁸

Over a century ago, Dr David Livingstone came with the Bible, and preached a loving God who created all people equal. Slavery was abolished. But in its place came colonialism. Livingstone was hiding a foreign government in his Bible. Now descendants of Livingstone are coming, again with sheep's skin, preaching human rights and we are being

⁴⁵ *Weekend Nation* 30 April 2011.

⁴⁶ The term 'same-sex marriage' seems to be more in use now in the debate over gay rights. It could probably be as a result of a recent amendment of the Penal Code (sec 137/A) that now criminalises lesbian sexual acts. Or it could be emanating from the government's attempt to put in the minds of the populace that there are moves to allow same-sex marriages in Malawi, and not just mere homosexual or lesbian acts, something which may provoke stronger reactions from the public.

⁴⁷ The opinion was written by Mzati Nkolokosa, the Controller of News and Current Affairs, a senior figure in the hierarchy of MBC.

⁴⁸ As above.

converted. One day, our children shall realise we were fooled again... Our enemies are fighting our development ... The wedding of Steve(n) Monjeza and Ti(w)onge Chimbalanga was the beginning of a script by our enemies ... After the gay wedding, our enemies started saying all sorts of things ...

As can be seen from the opinion, the word 'enemy' is used repetitively and the writer paints a picture of a struggle among Malawians aided by foreigners to bring confusion and hinder 'development' in the country.

Most churches are uncompromising in their stand over the issue of minority rights. Apostle Samuel Chilenje of Jesus Pentecostal Church reportedly told his congregation that advocates and those who practise same-sex should be put to death.⁴⁹ He said minority rights do not exist as 'anything against God is not a right'. Other churches or religious groupings are more tolerant. Reacting to the statement by Apostle Chilenje, the Church of Central Africa Presbyterian, one of the biggest denominations in Malawi, said that was going too far.⁵⁰ Reverend MacDonald Kadawati of the Church said that the Bible should not be interpreted literally. Another senior cleric of the same Church, Dr Felix Chingota, on 15 May 2011 asked the church to be 'firm' in the inclusion of homosexuals, arguing that its policy was to accommodate people from different backgrounds who needed salvation.⁵¹ The comments were supported by Dr Silas Ncozana, a retired senior clergyman of the Church of Central Africa Presbyterian, who reportedly said homosexuals needed salvation and should not face death as was the case in other countries.⁵²

On the part of organisations supportive of gay rights, there have been three that have been outspoken on the issue. Two of these have been cited in the earlier part of this paper, namely the Centre for Development of People and the Centre for Human Rights and Rehabilitation. The other group is Malawi Religious Leaders Living and Affected by HIV and AIDS (Manerela+). In one tough statement made by the Centre for Human Rights and Rehabilitation, its acting National Co-ordinator, Reverend Macdonald Sembereka, said that '[a] nation that promotes homophobia is a lost society

⁴⁹ *Weekend Nation* 30 April 2011.

⁵⁰ As above.

⁵¹ Reported by Zodiak Broadcasting Station, a leading independent private radio station.

⁵² As above.

... denying the existence of other sexual orientations forces gays and lesbians into hiding, which unknowingly increases the spread of HIV'.⁵³ Manerela+, the Centre for Human Rights and Rehabilitation and the Centre for Development of People accused some religious leaders of intolerance, which was in reference to Apostle Chilenje, who had called for the death of gay persons.⁵⁴ The three groups also asserted that the Malawian government actually recognised same-sex relationships:⁵⁵

We would like to challenge the government that their empty political rhetoric that same-sex relations are inexistent in Malawi is contrary to what their principles and technocrats state ... the issue of sexual minorities is not new to them as there is documented evidence that the Malawi government has previously participated on this issue at the United Nations level.

The Centre for Development of People contended that the government was not abiding by the requirements of the instruments it ratified, such as the African Charter.⁵⁶ The organisation also sought to clarify that rights groups and donors were not aiming at allowing same-sex marriages in Malawi, but were fighting for non-discrimination based on sexual orientation.⁵⁷ This may support the view that the Malawian government was twisting the facts of the matter to provoke a stronger backlash from the public.⁵⁸

An opinion in the *Weekend Nation* supported this line of thought, stating that the international community was not trying to force Malawi to legalise same-sex marriages, but that there were concerns that the country was discriminating against homosexuals despite its republican Constitution that prohibited such kind of actions.⁵⁹

The donor community has in a tactful way put across the message to Malawi that the country has to stop discrimination against homosexuals or face an aid freeze. The major donors who provide support for the country's budget, headed by the EU chief in Malawi, Alexander Baum, spoke of non-

⁵³ *Daily Times* 20 April 2011.

⁵⁴ *Weekend Nation* (n 49 above).

⁵⁵ *Malawi News* 6 May 2011.

⁵⁶ *Weekend Nation* 9 April 2011.

⁵⁷ As above.

⁵⁸ See explanation (n 46 above).

⁵⁹ *Weekend Nation* 30 April 2011.

adherence of human rights issues affecting the provision of aid, which was in reference to the issue of gay rights.⁶⁰ Individual donor countries, such as Britain, France, Norway, Japan, Ireland, Iceland and the United States, have also expressed concern over the same.⁶¹ These countries have not come out clearly that they will freeze aid to Malawi over the laws on minority or gay rights, but there is unease in Malawi that there will be challenges in respect of external support to the country's budget in the 2011-2012 and even subsequent financial years. It must be recalled that, since the UN Secretary-General, Ban Ki Moon, visited Malawi and called for a repeal of some of the country's 'archaic' laws, the government has not taken such a move and has angered gay rights activists more by criminalising lesbian sexual acts, as already stated in this paper.

The friction has been intensified further with comments made by President Bingu wa Mutharika at a political rally in March 2011 that people who practise homosexuality are lower than animals.⁶² The Justice Minister, George Chononda, also recently said that Malawi was not ready 'to change laws to satisfy donors', adding that the country should have some principles 'for the benefit' of its citizens.⁶³ Some analysts suggest that the tough pronouncements are not mere squaring off by the government against the international community, but efforts to divert attention from real issues affecting Malawians, such as a spate of fuel and foreign currency shortages,⁶⁴ revelations of corruption involving senior government officials, and the enactment of an anti-press freedom law.

Seemingly, differing perspectives have been emerging from some Malawian officials on the issue of 'men having sex with men' (MSM). Principal Secretary in the Office of the President and Cabinet on HIV, AIDS and Nutrition, Dr Mary Shawa, for example, told a weekly that 'the country pursues a non-discriminatory policy in public health strategy' in respect of MSM, but pointed out that that was not tantamount to the legal recognition of homosexuals.⁶⁵ However, Dr Shawa dismissed the debate on homosexu-

⁶⁰ *Daily Times* 23 March 2011.

⁶¹ *Daily Times* (n 53 above).

⁶² *Daily Times* 16 May 2011.

⁶³ *Weekend Nation* 12 February 2011.

⁶⁴ Malawi is a net importer and it relies heavily on the availability of foreign currency on the market to import essential goods such as fuel and medicines.

⁶⁵ *Malawi News* (n 55 above).

ality as a 'waste of time' in the same interview, saying it was not a priority issue.

Regrettably, the Malawi Human Rights Commission, the independent and constitutional rights protection body in the country, has been quite non-committal on the issue of gay rights or non-discrimination based on sexual orientation. In its recent comment on the issue, the Executive Secretary for the organisation, Grace Malera, simply said: 'The MHRC continues to deliberate on this matter.'⁶⁶

5 Social construction of homosexual rights in Malawi

Going back to the idea of social construction of human rights that was dealt with earlier in the paper, it was noted that the concept 'emphasises the socially-created nature of social life, and accordingly views the construction of universal human rights as the product of the balance of power between political interests at a particular point in history'.⁶⁷ It was noted that rights are shaped as a by-product of interaction of various actors with a range of interests at stake, including power and influence. The section also looked at the social life of rights, how power is used in the institutionalisation of rights and also how societal structures contribute to the violation of rights and a restriction of the institutionalisation of rights.

Taking into account the events that have been taking place in the wake of the Steven Monjeza and Tiwonge Chimbanga case, I argue that the rights of those who engage in same-sex relations, whatever the description (homosexual or gay), are being constructed in Malawi and the process is going on quite inconspicuously because the focus is on the law and politics. Politicians, especially top government officials, are speaking about the laws of Malawi not allowing homosexual acts, as the international community led by the UN talks of the laws of the country as needing change as they are 'archaic'. Rights watchdogs are condemning Malawi's discrimination against lesbians and gays, which is a statement that has an ethical slant.

The state-controlled national radio is talking about confronting enemies of development and culture as the private press is at times homophobic and at other times seems sympathetic to the cause of gay rights. More crucially,

⁶⁶ *Weekend Nation* 16 April 2011.

⁶⁷ Short (n 13 above) 98.

donors hint that not protecting minority rights may have repercussions with regard to aid, and the government has increased its rhetoric on same-sex relationships, saying that Malawi is not ready for that and stating that homosexuals 'are lower than animals'. It is the interaction of all these actors that are shaping the rights of gays quite unnoticed, bearing in mind that a sociological perspective of the debate has largely been absent in Malawi.

However, the use by the state of chiefs to speak out against gay relationships, and in rare cases comments by sociologists on the same issue, indicate the existence of some form of sociological perspective in the Malawian context. This is partly because traditional leaders are viewed as the custodians of culture, societal values and customs in Malawi. But the flipside of this is that chiefs are viewed as always supportive of official policies and in some cases they are openly partisan. Indeed, traditional leaders stress that they serve the 'government of the day' and not opposition forces. Such actions may put in doubt the validity of their pronouncements on the gay rights issue. Hence, although the focus is on politics and the law, there is some input from the sociological front, but it is not as visible or influential as the former.

The balance of power, it must be said, lies in the hands of the donor countries, considering that they contribute 40 per cent of the resources in Malawi's annual budget. The construction of the rights reflects this balance of power and influence donors have over policies in Malawi. It is perhaps inevitable that some form of official recognition of MSM, or women with women, will be institutionalised at some point in time. The pardoning of Monjeza and Chimbalanga by President Mutharika after the intervention of the UN Secretary-General is an indicator that, as much as Malawi may claim sovereignty, the country does not have the economic independence to withstand pressures from the international community.

Taking into account the tough homophobic stance by the President, some government ministers and other influential establishments, such as religious groups and traditional leaders, the institutionalisation of rights or some form of recognition of gays and lesbians will possibly happen in a manner that shows that some quarters oppose such rights. This could be in a way that mirrors the idea that the institutionalisation of rights usually does not threaten much the *status quo* of the powerful and influential, as already discussed above.

The comments made above by the Principal Secretary in the Office of the President and Cabinet on HIV, AIDS and Nutrition, Dr Mary Shawa,

concerning the government's position on MSM are interesting. The official line has been that the Malawian authorities do not accept and would not accept same-sex relationships with due reference to the country's laws. However, Dr Shawa presents a somewhat different view by arguing that there is no discrimination against MSM in health policies. This could as well be a future 'exit strategy' if the authorities decide to give up their resistance to the institutionalisation of homosexual rights. The Malawian government could also use this statement on 'non-discrimination' to lay claim to recognising gays, thereby institutionalising the rights of same-sex couples in a rather less threatening manner to the authority's power and influence. I make these assertions in view of aid being a crucial aspect in Malawi's development projects and budgetary support, as already stated earlier on. With the country facing an economic squeeze, it may bow to pressure from donors to accept gays as a condition to receiving further assistance.

Structures in the Malawi society such as religious groupings, the somehow strong relationships in villages through cultural practices, such as gatherings for funerals or rite of passage ceremonies, will also help restrict the institutionalisation of such rights for homosexuals. This is in the light of the rather conservative nature of the Malawian society and the influence of religion in the country. Additionally, from the perspective of advocates of homosexual rights, structures such as religious groupings and traditional leadership are helping violate the rights of homosexuals. This assertion should be seen in the context of sentiments such as calling for the death of gays and lesbians, or other homophobic statements.

As discussed earlier in the paper, the Malawian government seems to be using the gay rights issue as a diversion for the numerous social and economic problems facing the country, by twisting the issue to appear as if the international community wants Malawi to legalise same-sex marriages. This could also play a significant role in ensuring that any institutionalisation of rights or form of recognition for gays and lesbians is done in a less threatening manner to the government's power and influence over the masses.

Last but not least, I feel that ordinary Malawians have largely been left out of the issue. The majority of Malawians live in rural areas quite detached from the centres of power and politics dominating the social construction of gay rights. These people, however, will have to face the consequences of the outcome of the process at some point, considering the issues at stake, most notably donor aid. If the Malawian government acts against expectations

and opposes any institutionalisation of gay rights and in response donors freeze their aid, the most affected citizens would be villagers. This is in light of the fact that donors support key sectors such as health, agriculture and education, which all have a large bearing on the lives of the rural masses.

6 Conclusion

The importance of sociology to the study and practice of human rights has been shown in this paper, assisted by the case study of Malawi's first openly gay couple who were prosecuted, jailed and later pardoned by the authorities in the country. Sociology illuminates the social life of rights, how rights are constructed, how power is used in the institutionalisation of rights as well as how society structures help violate rights and restrict the institutionalisation of human rights. Seen from the lens of gay sexuality and other gender rights activists, the case of Steven Monjeza and Tiwonge Chimbalanga is about discrimination and inequality. As sociology deals with such social inequalities,⁶⁸ it is crucial to human rights.

After an initial lack of engagement between human rights and sociology, a sociological perspective seems to be gaining momentum. The interdisciplinary nature of human rights is being included in textbooks; international conferences on sociology and human rights have been taking place in some parts of the world, including Europe and Asia, and curricula for human rights courses are being modified to recognise the contribution of sociology around the world.⁶⁹

It is worth noting that some scholars suggest that research into human rights will possibly further strengthen sociology and show new areas of 'struggle and social change' as well as help study how theory and methodology could be applied to sectors of 'domestic, national or international concern'.⁷⁰

As seen in the paper, social construction of human rights involves balance of power and political interests. It seems as if the donor community has more leverage on the balance of power over the Malawian government. The Malawian authorities are largely homophobic alongside many religious groups. What may be of interest is to study further how the rural masses in

⁶⁸ Hynes *et al* (n 12 above) 823.

⁶⁹ Hynes *et al* (n 12 above) 817.

⁷⁰ Hynes *et al* (n 12 above) 827.

Malawi, who wield neither power or influence, are affected in the social construction of homosexual rights. This paper is therefore recommending studying how the institutionalisation of the rights may impact people and their cultures. In other words, the paper is of the view that largely the ordinary villagers have been left out in the debate on gay rights in Malawi.

Such further studies may also possibly help to answer questions on what is modern and acceptable, archaic and unacceptable in terms of what has been institutionalised in human rights terms, as well as to show the meaning of gay rights or recognition to those claimants and those opposing such rights or recognition in a localised context such as Malawi.