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“Shamba”: understanding and responding to the drivers and dynamics of same-sex sexual activity, sexual violence, and HIV risk in the Malawi prison system

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ABSTRACT

Consensual same-sex relations and transgender expression are prohibited in Malawi. In-depth interviews (eight professionals, 30 former prisoners) were conducted to garner unique insights into the dynamics and complexities of prison conditions, human immunodeficiency virus (HIV) transmission, same-sex sexual activity and sexual violence. Reflexive thematic analysis yielded six themes: *Covert same sex sexual activity behind the walls of the Malawi Prison System; Survival-based sexual transactions; Consensual and forced same-sex sexual activity; Sexual urges and crossing the homosexual Rubicon; Health consequences; and Inadequate and insufficient vocational development and rehabilitation.* The government is recommended to repeal its laws and improve standards of detention (safety, space, food), healthcare and provide trauma-informed rehabilitation/reintegration for all. Advocacy efforts are warranted to scale up the HIV comprehensive package.

PRACTICE IMPACT STATEMENT

The Malawi prison system is advised to resource, deliver and scale up the United Nations HIV comprehensive package of 15 interventions in order to uphold the humane treatment of prisoners and protect them from sexual violence and sexually transmitted infections.

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Introduction

Same-sex sexual orientation and gender identity was historically not socially stigmatised or associated with disease or ill-health in Africa “except where Christianity and Islam have been adopted” (Murray et al., 2021). Homophobia and politization of same-sexuality in many African countries remains exacerbated by ultra-conservative religious agendas, punitive politico-legal frameworks of lesbian, gay, bisexual and transgender (LGBT) people, and media and political portrayal of same-sexuality as “un-African” and a “white disease” (Gloppen & Rakner, 2019; Kyomya et al., 2012; Nordic Africa Institute, 2017; Sowemimo, 2019). Thirty-one African countries¹ currently criminalise same-sex sexual relations through a variety of sanctions ranging from the death penalty to life

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imprisonment, custodial sentence, public stoning, flogging, forced labour and fines (Hairsine, 2019). This is a legacy of the colonial sodomy laws prohibiting “unnatural carnal desires and acts” (Kyomya et al., 2012), and fuels the association of same-sexuality with the human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) epidemic in Africa (Amnesty International, 2018; Hairsine, 2019; McKay, 2012; Nordic Africa Institute, 2017).

Prisons continue to be ignored in the discourse around LGBT rights in Africa and are particularly invisible in the HIV agendas in conservative African countries where same-sex sexual relations are criminalised (Van Hout et al., 2022). Sexual transmission of HIV inside prisons, and the subject of same-sex sexual activity and interplay with exposure to inter-personal sexual violence in African prisons remains taboo. HIV prevalence among people in prisons is higher than in the general population in Africa (varying from 2.3% to 34.9%), indicative of their identification as key population at risk of HIV acquisition both prior to and during incarceration (Egelund-Ryberg, 2014; Lawan et al., 2016; Saliu & Akintunde, 2014; Telisinghe et al., 2016; Usman et al., 2020, 2021). The African Commission’s Special Rapporteur on Prisons and Conditions of Detention in Africa has observed that poor conditions and the lack of age segregation, where juveniles are housed with adults, heightens their exposure and risk to non-consensual same-sex sexual activity and rape (African Commission on Human and Peoples’ Rights, 2012). Despite this, little has changed on the ground. A 2019 sub-Saharan African review covering 20 years of extant literature documented how harsh prison conditions fuel the exposure of vulnerable prisoners (including juveniles, disabled and LGBT minorities) to coerced sexual activity and rape perpetrated by both fellow prisoners and prison officials, and how engagement in transactional sex occurs in exchange for protection, food, soap and sleeping space (Zambia, Namibia, Mozambique, Uganda, Burundi, Côte d’Ivoire, Nigeria, Malawi and South Africa) (Van Hout & Mhlanga-Gunda, 2019).

We report here from Malawi, which is classified as a least developed country by the Organisation for Economic Co-operation and Development (2022). The domestic HIV prevalence rate among people aged 15–49 years is documented to be 7.7% [7.1–8.0], with 990 000 people living with HIV [920 000–1 100 000] (UNAIDS, 2021). There has been slow progress in addressing legislative barriers and policy gaps experienced by key populations at risk of HIV/AIDS, which include sex workers, gay men and other men who have sex with men (MSM), transgender people, people who use drugs and people in prison (Frontline AIDS, 2022). Most recent key population HIV estimates are 12.9% among MSM and 49.9% among sex workers (2020 data), and 19% among prisoners (2019 prison data) (UNAIDS, 2021). Global AIDS monitoring from 2022 shows that whilst HIV expenditure from domestic public sources was 5.7 million (US dollars), international source expenditure was 202 million (US dollars).

The Malawi prison system of 30 prisons suffers from lack of sufficient government resourcing (financial and human). Conditions remain severely congested, with inadequate sanitation, hygiene, ventilation and food insecurity compounding prisoner ill-health, malnutrition, and circulation of disease (Gadama et al., 2020; Gauld, 2021; Jumbe et al., 2022; Malawi Inspectorate of Prisons, 2021; United States Department of State, 2020). A joint civil society submission (including by authors) to the UN Committee on Economic, Social and Cultural Rights in 2023 indicate substantial concerns around threat to health and life, with regard to weak infrastructure, lack of resourcing, severe overcrowding, inadequate environmental health conditions (safe space, ventilation, hygiene and sanitation, clean water, interrupted electricity supply), disease outbreaks such as cholera, and food poverty, with prisoners without food for up to five days (CHREAA/IRLI/Reprieve/World Coalition Against the Death Penalty, 2023). Civil society organisations play a vital role in backfilling basic needs provisions and supporting health responses (Gadama et al., 2020; Gondwe et al., 2021; Jumbe et al., 2022).

The voices of people in prison in Malawi are regrettably still kept out of societal and public health discourses regarding same-sex sexualities and HIV/AIDS (Van Hout et al., 2022). The Malawi Penal Code and Prison Act prohibits same-sex sexual activity and transgender expression with custodial sentences of 8–14 years. There are enormous legal and practical complications with rape victim

disclosure, as claims infer that sodomy has occurred, resulting in victim arrest (Van Hout et al., 2022). Several HIV and public health studies acknowledge the (suspected) presence of same-sex sexual relations in Malawi's prisons (Biruk, 2014; Currier, 2020; Jolofani & DeGabriele, 1999; Kanguade, 2014; Mwakasungula, 2013; Nyadani, 2009). According to routine programme data from 2019, 1 500 000 condoms were distributed in prisons (UNAIDS, 2021).

In order to address this glaring gap in Malawian and indeed African public health and HIV discourse, we conducted a qualitative multi-stakeholder study which aimed to garner unique Malawian insights into the dynamics and complexities of prison conditions, HIV risk and transmission, same-sex sexual orientation, and sexual activity in prisons.

Method

This qualitative study was conducted by a transnational team of experts in the field of HIV/AIDS, prison health, forensic psychology, human rights, and qualitative research methods. Design and operations of the research were cognisant of the sensitivities of the topic and likely vulnerabilities and prior trauma of former prisoners consulted. A phenomenological methodology guided our research design (Finlay, 2012). Ethical approval was granted by the University Research and Ethics Committee (22/PHI/007) at Liverpool John Moore's University, United Kingdom and the University of Malawi Research Ethics Committee (P02/22/130), Zomba, Malawi.

Context

The Malawian prison estate comprises of 30 prisons dispersed across four regions of Malawi (Eastern, Southern, Central and Northern Region World Prison Brief, 2022). The system has an official holding capacity of 7,000 spaces, but as of October 2022 (most recent data) is 233.8% over its capacity with a prison population of 16,366 people (World Prison Brief, 2022). This includes people sentenced, detained for pre-trial, and on remand. Just over one percent of the population are females and 7.7% below the age of 18 years (World Prison Brief, 2022). The system has in previous years operated at 260% over capacity (Malawi Law Commission, 2018; Malawi Prison Inspectorate, 2019).

The present study was undertaken in the Eastern Region of Malawi and with gatekeeping provided by our non-governmental organisation (NGO) partner (Centre for Human Rights Education Advice Assistance CHREAA), which has a longstanding history working closely with the Malawian prison authorities and providing a broad range of in-prison and outreach therapeutic support advocacy and reintegration services for prisoners and former prisoners in the community. Barriers to engagement in the study were reduced as CHREAA staff already had or were able to quickly develop trust with participants.

Recruitment and sample

Our sample consisted of two groups: Professionals working in the detention space and former prisoners.

Former prisoner group

Through convenience sampling, potential participants were approached by the gatekeeper verbally, once, during a support group session with the NGO partner for former prisoners. Targeting people engaged in support and reintegration groups, meant good levels of trust already existed between the gatekeeper and potential participants; this assisted researchers when sharing the purpose and aim of the study and helped alleviate any concerns participants may have had. Inclusion criteria specified: Adults who could provide voluntary consent and were former prisoners (released within the past 6 months, with a detention period of no less than one month). Potential participants were provided verbal and written information on the study and its ethical/consent procedures,

and that the interview would take place the following week, allowing time to decide to participate. Participants for whom literacy levels meant they could not read the information sheet, a researcher at CHREAA read over the material. They were advised they could change their mind up to and during the interview and withdraw at any time. On receipt of the study information, interested participants gave verbal agreement to participate and an agreed interview day and time was arranged for the following week. At the start of the interview, participants were reminded of their right to withdraw and asked to sign a consent form to participate.

The sample consisted of 30 former prisoners ($n = 27$ males; $n = 3$ females). Ages ranged between 22 and 52 with an average age of 34 years, a sentence range of eight months to seven years and an average time of release of four months.

Professional stakeholder group

A purposive sample of professional stakeholder participants were approached by the gatekeeper using existing professional networks of the NGO via email. Inclusion criteria required them to be adults employed as health/judicial/prison professionals, employed by a United Nations agency or NGO with expertise in the detention space. All interested individuals had the opportunity to ask verbal and written questions about the study on a one-to-one basis with contacts at the NGO in Malawi, and/or via MS Teams or email with UK researchers prior to deciding whether to partake. They too had the opportunity to withdraw at any time. Like the former prisoner group, on receipt of the study information, interested participants gave verbal agreement to participate and an agreed interview day and time was arranged. At the start of the interview, participants were reminded of their right to withdraw and asked to sign a consent form to participate. The sample consisted of eight professional stakeholders ($n = 8$) (five male/three females) and included one judicial professional (female), three penal professionals (one prison warder, two senior prison officials, all male), one prison health professional (female), two representatives from NGOs (one male, one female) and one United Nations agency representative (male).

Our sample size was guided by our own experiences as qualitative researchers, as well as the expertise of others in the field (Braun & Clarke, 2022; Clarke & Braun, 2013; Finlay, 2012). First, we wanted to capture as many people as possible with a lived experience of living or working in the Malawian prison system, while also maintaining a manageable sample size for a thorough qualitative analysis. While there are no hard and fast rules to this, sample sizes of 30+ are acceptable in research teams that are large and have experience in this method. Second, for our professional stakeholder group, we were already limited to a smaller population of key experts at the domestic and regional levels to draw from.

Data collection and analysis

Two distinct interview guides were created through team consultation (all authors agreed the final set of questions) and were based on a medico-socio legal realist assessment of situation on the topic of HIV and same-sex sexual activity in the Malawi prison setting (Van Hout et al., 2022). Interview guides consisting of 20 questions were designed to facilitate a semi-structured one to one interview. Most interviews were undertaken using the local language, but some professional stakeholders (NGO and UN representative) were undertaken in English. All interviews were carried out by authors two and three.

The interview guide for former prisoners included questions that explored their experiences of detention, prison conditions, awareness of occurrence of same-sex sexual activities between fellow prisoners, and related health consequences while incarcerated. For example, "Can you please tell me a little about your experience of detention?" and "Are you aware of prisoners having sexual relations with each other? If yes, what kind of sexual practices do they engage in?" Interview questions were not directed at the individual-level experience of same-sex sexual activity or sexual trauma. This was to prevent unintended disclosure of criminal activity and participants

were advised not to describe their own personal experience (where possible), but rather refer to observations of dynamics and drivers of same-sex sexual activity within the prison environment itself.

Interviews with professional stakeholders explored their perspectives with regard to prison system awareness of sexual activity between prisoners, and operational level responses in terms of surveillance, control, HIV/AIDS awareness-raising and healthcare within the Malawi prison system. Questions such as “Are you aware of instances where prisoners have disclosed rape or violent sexual assault to prison staff?” and “Are there any sexual health support services provided to individuals in prison?” and “What environmental or structural factors do you think contribute to same sex behaviours between prisoners in the prison setting?” participants were asked to expand on their answers.

Interviews lasted between 45 and 60 min and were conducted by authors two and three in a private room at the NGO headquarters and audio-recorded with participant permission. Prior to the interview, 20 min were allocated to allow for further questions. Participants were reminded not to disclose or detail their own personal experiences, informed that they did not have to answer any questions they did not want to, advised they could withdraw at any time, and that NGO support services were available should they experience distress or anxiety. Audio recordings were transcribed from the local language into English by authors two and three and anonymised onto Word documents and stored on a secure server and once checked for accuracy, audio recordings were deleted.

The data was collected to saturation and analysed in a manner that respected and expressed the subjectivity of participants’ narratives around same-sex sexual relations in the prison setting in Malawi, whilst cognisant of the reflexivity of researcher interpretations given the Malawi legal and cultural context. Thus, reflexive thematic analysis enabled “the researcher’s reflective and thoughtful engagement with their data and their reflexive and thoughtful engagement with the analytic process” (Braun et al. 2019, p. 594). This approach adhered to the six phase steps (Braun & Clarke, 2022) to ensure scientific rigour by the team; (1) familiarisation with the data involved manual transcription (undertaken by the second and third authors), followed by all authors reading and re-reading the transcription, then individually and with authors one and six, and two and three, working in pairs to share and identify early ideas; (2) authors one and six generated initial codes by developing a coding scheme and on agreement, systematically coded the data; (3) authors one and six generated themes using an iterative process to organise codes into groups in developing themes and subthemes, regular discussion was undertaken to agree the development of themes; (4) with the review of potential themes via the whole team refinement and review of generated themes as a collective and with examination of coherence of patterns across themes; (5) authors one and six finalised the definition and name of themes and (6) drafted and organised the final order of themes, with the remaining authors (two, three, four and five providing a review of drafting). As patterns and outliers emerged, periodic briefing sessions were held between the team. All members assisted in interpretation of the data and reached consensus around identified themes, as well as clarifying ambiguities.

Trustworthiness of the data was ensured in various ways; by conducting the data collection in a precise, consistent and exhaustive manner, triangulation of data according to source, close adherence to the six step analysis framework, and prolonged engagement by all members of the team with the data.

Results

Following our analysis, we developed six reflexive themes: *Covert same sex sexual activity behind the walls of the Malawi Prison System*; *Survival-based sexual transactions*; *Consensual and forced same-sex sexual activity*; *Sexual urges and crossing the homosexual Rubicon*; *Health consequences*; and *Inadequate and insufficient vocational development and rehabilitation*. We discuss each in turn here.

Covert same sex sexual activity behind the walls of the Malawi prison system

There was consensus across sources that same-sex sexual activity (both consensual and non-consensual) between men routinely occurs within Malawi prisons. Former prisoners note the normality of “anal sex” (Former prisoner, male, 22 years, #10) with one participant reporting “men sleeping with their fellow men, that’s life in prison” (Former prisoner, male, 34 years, #1). Same-sex sexual activity between men in prison was corroborated by professionals, who regularly received “reports of some same-sex sexual behaviours or sexual abuse in some of our prison facilities” (Penal professional, male, #3) with health staff knowing in “the male section it happens” (Health professional, female, #1).

While same-sex behaviours are common between men in prison, they appear less so amongst women, or at least this was reported by participants in terms of their observations of women in prison. One former female prisoner revealed she had not “heard or seen of any sexual activity among us females, but we hear it is very common among the male prisoners” (Former prisoner, female, 27 years, #15). One reason for women not engaging in same-sex activities in prison was proffered by a former prisoner. She believed the risk of capture, lack of opportunity, and less congested living arrangements prevented these behaviours, she stated: “I don’t think you would get that chance ... you will be caught easily by the female warders. It is easy to monitor us since we are rarely many ... not like it is in the male section” (Former prisoner, female, 49 years, #14).

We were interested to understand if same-sex and heterosexual activities were observed or known to occur between staff and prisoners. Across our sample, it was reported that same-sex sexual activity in prisons, appeared confined only to those detained. Former male prisoners had “never heard of anything like that” (Former prisoner, male, 34 years, #21) the “bosses that work there aaah no ... I have never seen the bosses in sexual relationships with prisoners” (Former prisoner, male, 45 years, #7). Heterosexual sexual activity between prison staff and prisoners was remarked, however, this was “in the past it was heard that male prisoners and female officers was common” (Penal professional, male, #2); even then it was “very rare, or it’s something new ... most cases I have heard about prison staff would maybe be after a prisoner has been released” (Penal professional, male, #3). Thus, there were no reports of current sexual relations or exploitation by prison warders towards prisoners.

Due to the stigmatised and illegal nature of same-sex relations in Malawi, same-sex activities in prison, operate within highly covert constraints. Such covert behaviours mean that some men are vulnerable to sexual abuse and HIV transmission, while also being unable to access support and help. Participants retold the consequences of same-sex activity in prison, even with victims of sexual assault:

There are disciplinary procedures that are undertaken within the system and the most recent one where the case was even reported at the court in Mangochi. We had such a case where I think somebody was caught and convicted to, was it 14 years if not 20 years after he sexually abused a colleague in prison cell. (Penal professional, male, #1)

While warders “strongly oppose these acts. They take away a person’s sleeping space, they tie them up, beat them” (Former prisoner, male, 25 years, #12), punitive tactics to control and deter were frequently reported. Likewise, prisoners were afraid to report victimisation due to the corruption of prison warders who would permit sexual activity in receipt of a bribe: “Yes they complain but there is nothing that they do because the officials also eat money from these long serving prisoners” (Former prisoner, male, 25 years, #12).

Former prisoners described the presence of a hierarchy with regard to the reporting incidents of sexual abuse within the prison. Cells were observed to have a designated “protector” who is meant to oversee the prison cell: “Officials elect leaders among us ... we give our messages through them” (Former prisoner, male, 39 years, #4). In instances where inmates report incidents of sexual abuse, they lodge complaints to the protectors who report to higher authorities. Despite efforts to keep all same sex-activities covert, prison officials are able to easily identify other behaviours:

For example, at [prison name redacted] if you go down in uniform, they see you and if there are things they were doing ... they have a quick communication. We know when they have argued ... for example if I have a girlfriend and tomorrow I find her with another man ... an argument will erupt ... it's the very same in prison (Penal professional, male, #2)

Of particular concern are reports from both former prisoners and professionals regarding insufficient cell surveillance, particularly at night or during cell lockdowns. These are dangerous times as sexual assaults occur and it was impossible for victims to call for help or indeed disclose sexual violation or coerced sexual activity to authorities. Instead, they become "rumours because sometimes not many prisoners were complaining to the warders that supervise them ..." (Penal professional, male, #3). This lack of control appears to exacerbate incidents of sexual assault and rape as "people are afraid to report ... you know there are long term prisoners who engage in such practices and they get too comfortable at times ... one cannot have the courage to report such a prisoner" (Penal professional, male, #3). Even when people report sexual assaults and exploitation, generating the "proof of such allegations is quite a challenge so sometimes it is difficult to just act based on rumours" (Penal professional, male, #1) indeed, "the prison environment is conducive for that because [the] surveillance system is not good, no CCTV's" (Judicial Professional, female, #1).

Survival based sexual transactions

There was broad consensus between professional stakeholders and former prisoners that most prisoners who engage in same-sex sexual activity do so in an attempt to navigate harsh prison conditions. Transactional, survival-based sexual favours provides food and sleeping space because "everything is hard in prison, food, place to sleep so they entice other people to 'stay' [have sexual relations] with them" (Penal professional, male, #2) it also provides protection because "for you to be at peace, you need to make some type of a relationship with some people in prison" (Former prisoner, male, 38 years, #6).

Prison conditions result in opportunities for sexual exploitation. Severely congested cell spaces act as a fertile environmental for sexual activity between men and "what happens there is not good, sleeping in a compacted place" (Former prisoner, male, 50 years, #9). Prisoners described sleeping in unsafe positions including "shamba ... where they are packed so close to each other without space for stretching their legs or turning throughout the night". When younger prisoners arrive to prison, they are easily exploited; after sleeping "seated throughout the night with their knees to their chest" longer term prisoners offer more comfortable sleeping spaces in exchange for sex, they suggest "my friend, you should be coming to sleep in the side-lines and it's there that they are dealt with in inappropriate ways" (Former prisoner, male, 23 years, #30).

In addition to harmful sleeping arrangements, food poverty drives sexual exploitation. Prisoners incarcerated away from family support are especially vulnerable to sexual abuse. Many described the poor diet of one daily meal of nsima (the staple food in Malawi consisting of a thick porridge made of maize flour and water) with beans or peas, and consequent malnutrition in prisons fuelling coerced sex in exchange for food: "Over 95% of those people you see in prison are poor, the main factor is poverty, so they indulge in such activities to survive" (NGO representative, male, #1). In fact, the more food-resourced prisoners engage in subtle coercive tactics to manipulate vulnerable prisoners, especially those without family support and food:

The truth is life in there is hard. So, it is very hard if your relatives do not come to see you and do not bring you food. Some people coax you to give you food ... you see, we do not know what they think, they can find you at night and tell you 'to do this' [sexual activity], you ask 'what's going on? I have never done this'[sexual activity], and they will tell you [shouts] 'aaah do this'[sexual activity]. (Former prisoner, male, 27 years, #25).

Consensual and forced same-sex sexual activity

Despite homosexuality being illegal and highly stigmatised in Malawi, prisoners recognised some men "love their fellow men so they do such things willingly" (Former prisoner, male, 47 years,

#23) indeed, “there are people serving jail terms for homosexuality” (Former prisoner, male, 29 years, #22), including transgender women. Several former prisoners referred to the acceptance of transgender women in prison, and their operation of transactional sex:

I met someone called Mama G (Lady G), he is a man but even if you were to see him, even outside prison he looks like a girl, shaves his beard and there are more people like him, more than 30 they just take themselves as ‘short time women’. So, when it is time, prisoners know where to go to, as to who provides ‘short time’ [quick transactional sexual encounter]. You will just be surprised that vegetables and other things are coming on the ‘ladies’ residents so you will just know the lady went for a ‘short time’ and if you stay with that person, it means they will want to do the same to you. You will think he is a friend but when it gets dark, they will want to have sex with you.’ (Former prisoner, male, 33 years, #24)

While some acts are consensual, the dynamic of power and control within prison means younger or more vulnerable prisoners are exploited by older, stronger prisoners serving lengthy sentences, officials recognise “such abuses tend to take place in the major prisons where you have long term prisoners” (Penal professional, male, #2). In addition to status, situational opportunities increase incidents of rape. Dominant prisoners exploit situations such as engaging in the “punishment” of newly committed young males “it’s like punishing each other because in prison we punish each other, when we are suffering, we just punish each other” (Former prisoner, male, 50 years, #9).

Prison officers describe relationships between males, including inferred hierarchical titles for sexual partners such as “child”, perhaps indicative of the unique power dynamics at place between the strong and the weak: “They argue sometimes that you are chatting with their child because they call the woman ‘child’. We know but they hide” (Penal professional, male, #2) and in juvenile detention settings “we have heard about such cases happen in some juvenile offender facilities” (Penal professional, male, #3). There was broad consensus between the views of ex-prisoners and professional stakeholders that the vast majority of male prisoners engaging in same-sex sexual activity, did so under duress “they are forced” (Former prisoner, male, 49 years, #5) and routinely exposed to rape “done by force ... done by force ... by being forced, it’s not like a man like me can accept one to have anal sex with me” (Former prisoner, male, 29 years, #19).

Sexual urges and crossing the homosexual rubicon over time

Many participants observed prisoners engage in same-sex sexual activity and relationships due to lack of opportunity to see their wives and girlfriends:

they are starved of sex and because there are no conjugal visits or conjugal rights it seems as though we are depriving them so there is no option and this creates a possibility for people who came in as normal ... to start homosexual behaviours ... just to survive. (UN agency representative, male, #1).

Prisoners claim the basic “sexual desires of missing a woman” (Former prisoner, male, 33 years, #24) results in unbearable sexual urges and transgression toward same-sex sexual activity, one participant reports “those that came a long time ago like those serving life sentences ... look at us they see us as girls ... so they say you are ‘smelling the buttocks’” (Former prisoner, male, 50 years, #5). Attachments to same-sex partnerships are however fickle: “If the one leaving prison is the ‘wife’, that means the man will find another wife since the prison receives people daily ... if the man goes out, that means the woman will find another man” (Former prisoner, male, 37 years, #26).

Participants observed how same-sex sexual activity becomes a learned behaviour, determined by environment and length of sentence, where over time heterosexual men conform to homosexuality:

... a prison setup basically will define your behaviour and culture because when you enter, you have people who will guide how you will live. You find the warders, people who have overstayed in prison, people with so much power, people who have everything, there are people serving life imprisonment, they do not dream of getting out. That becomes part of their life. They have no hope ... we cannot call them homosexuals. They are just driven by conditions and circumstances. (Penal professional, male, #3)

Indeed, beyond prison, some individuals maintain a homosexual identity they “fail to go back while some do both sides” (Penal professional, male, #2). However, others return to heterosexual activity, confident their behaviour was contained to the prison context; “when you meet outside, you tell him, I don’t want, we only did it because we were in prison” (Former prisoner, male, 37 years, #26).

Health consequences

Despite awareness of reduced national HIV prevalence rates in recent years (as a result of information campaigns and uptake of anti-retro-viral treatment) participants remained concerned about the transmission risks of HIV and STIs because of “the prison setting ... prisoners infect each other with HIV and other sexual infections” (Prison health professional, female, #1). Indeed, a broad range of acute and chronic illness were observed as direct consequence of engagement in same-sex sexual activity, including rape. Many former prisoners illustrated visible signs and symptoms of sexual ill health and HIV/AIDS. One reported how prisoners “bodies react. The kind of sickness they go through tells it all. It is so easy to tell they are involved in homosexuality. Their stomachs swell due to infections” (Former prisoner, male, 52 years, #9). Another noted how “they can develop some rash, some ugly rash. Or you can even find a person vomiting blood only” (Former prisoner, male, 47 years, #23) despite hygiene efforts “they bathe but they don’t appear as they have because they are sick. Their body is shocked” (Former prisoner, male, 52 years, #9). Others observed that prisoners can subsequently die due to engaging in sexual behaviours “it is very risky, and some people die” (Former prisoner, male, 34 years, #8).

One of the key challenges is “the issue [of] accessibility of condoms to prisoners not distribution” (UN Agency representative, male, #1). A prison health professional highlighted how prison clinics do not have condoms to distribute, despite these assisting “in HIV prevention”. She explained the sensitivity of this, in that the “prison doesn’t want to look like they are encouraging homosexuality, which is a crime” (Prison health professional, female, #1). Participants underscored the deep trauma experienced by affected prisoners, not limited to experiences of sexual abuse, the acquisition of HIV and other infections, and chronic ill-health: “The impact is obvious, because a person who is abused is affected psychologically or mentally and this can lead to mental disorders or something like that apart from maybe transmission of HIV/AIDS” (NGO representative, female #2) and “we only offer post care for those who come for medical attention” (Prison health professional, female, #1).

While it was reported by prisoners that prison warders would help those showing symptoms of disease by referring them to the prison clinic, and where required to tertiary care outside the prison “they can take him to the hospital if he is sick”. (Former prisoner, male, 38years, #11); the covert hidden nature of same-sex sexual activity and related health consequences hampered efforts to seek medical care. Prisoners feared retribution and so “issues are kept a secret so most times they are not really assisted ... those that do not report just fall ill” (Prison health professional, female, #1). Prison officers claimed the Malawi prison system had intensified awareness raising activities regarding the negative impacts of same-sex sexual activity, he recalled a greater focus on:

Awareness. There are prisoners who teach their fellow inmates, peer educators ... if there is anything we are doing better it is in that line ... in 2012, the group of cultural troop performed a play concerning ‘men who sleep with men’ ... telling people of the negative impacts of men having sex with men in prison. (Penal professional, male, #3)

Inadequate and insufficient vocational development and rehabilitation

The lack of positive vocational and leisure activity within the prison routine was deemed to exacerbate opportunities for same-sex sexual activities and sexual violence. In some narratives, the lack of rehabilitative intervention for men convicted of sexual offending was observed. It was reported that this substantially strengthened the motivation of those men with a history of sexual violence and as

such heightened the degree to which fellow prisoners are susceptible to rape. One UN Agency representative explained the problem of:

... idleness, we don't have enough programs maybe to keep them busy ... our rehabilitation programs are not yet responsive to the needs of prisoners, let's say someone has committed rape and they are taught to make metal buckets, will they change? ... you're not correcting the offence ... if people come with sexual offences they should go to sexual orientation programmes ... cause I'm thinking habitual rapists, they are arrested for rape eh and you just dump him in there, what would you expect? (UN Agency representative, male, #1)

There was clear consensus of the need for prisoners to be supported on release using a trauma informed approach to rehabilitate and reintegrate into the community. In particular support for their own experiences of sexual abuse was called on because the "mental trauma that prisoners get from sexual abuses need not be underestimated, most mental conditions in prisons are triggered by such kind of abuses" (NGO representative, female #2). Likewise, trauma informed approaches were recognised as a way to also protect others so "they [prisoners] should not continue when they get out of prisons" (Former prisoner, male, 25 years, #13). Concern for supportive programmes ought not to be limited to tackling sexual abuse, but all harms experienced while in prison. It was felt that all individuals prior to release would benefit from help because "there are a lot of other issues that will focus on changing their behaviour. Behavioural change, mind-set ... all those issues, I think they are essential" (Penal professional, male, #1).

Discussion

Similar to many of its neighbours, the issue of sexual orientation, gender identity and gender expression of prisoners and same-sex sexual activity among prisoners has long been ignored in Malawi, and is omitted from political, legal, human rights and public health/HIV agendas (Human Rights Watch, 2018; Van Hout et al., 2022). Inability of the Malawian prison governance to adequately address sexual violence is related to prison congestion and the failure generally of the justice system to respond to sexual violence and discrimination against boys and men, but also women and LGBT persons in Malawian society.

This unique study attempts to address this omission and represents the first known attempt to consult with both professionals and prisoners themselves around prison conditions and dynamics at play with regard to same-sex relations, sexual violence within prison and HIV (and other communicable disease) risk. It builds on earlier efforts which document suspected presence of sexual activity in Malawi's prisons. Whilst all efforts were made to be gender inclusive, the three women interviewed did not report observations of sexual violence, perhaps, indicative of better conditions in women's prisons and enhanced surveillance by female prison warders. African literature on women's vulnerability to sexual abuse, female-to-female rape, and transactional same-sex-relationships to survive prison is scant and remains confined to South Africa (Agboola, 2015, 2016; Kang'ethe et al., 2020). It was also not possible to interview transgender women with a history of recent incarceration.

The study reflects extant literature which documents severe congestion in Malawi's prisons along with insufficient space, particularly at night (leading to "Shamba" sleeping arrangements), lack of ventilation, hygiene and food insecurity (Gadama et al., 2020; Jumbe et al., 2022; Malawi Inspectorate of Prisons, 2021; United States Department of State, 2020). As reported in other African countries, congested conditions fuels same-sex sexual relations (for protection and for survival) particularly between older prisoners and young boys, and within violent power structures (Booyens & Bezuidenhout, 2014; Fortuin, 2018; Gear, 2005; Gear & Ngubeni, 2002, 2003; Legal Assistance Center AIDS Law Unit and the University of Wyoming College of Law, 2008; Lindegaard & Gear, 2014; Van Hout & Mhlanga-Gunda, 2019). Narratives describe how sexual relationships in prisons are generally based on power and control and span the (quasi) consensual (recent African prison research reports on dominant male partners referring to their male partner as "wives" or "child", the extent to which these roles are wholly consensual is debatable, see Murray et al., 2021), coerced (unwanted

touching, sexual assault of juveniles, rape) and transactional (food, clothing, blankets, sleeping space in return for sex). Boundaries between coercive and non-coercive sex in prison tended to conflate along with a blurring between heterosexual and homosexual identities in prison, and on release.

Consequently, the narratives acknowledge the realities of same-sex activity and exposure to sexual violence in Malawi's prison system, strongly underpinned by congestion, unsafe spaces particularly for more vulnerable prisoners, boredom, inadequate nutrition, lack of surveillance, and inadequate rehabilitation and reinsertion programming. The Malawian government (Ministry of Health, Ministry of Internal Affairs and Public Security, the Malawi Prison Service) is advised to take action to reduce harms associated with all forms of same-sex relations between prisoners and prevent sexual violence in prisons by improving basic standards of detention (provision of food, space, bedding) to reduce survival poverty driven transactional sex (some success is observed with regard to women's detention), and providing positive personal development, vocational training activities and trauma-informed rehabilitation/reintegration programming for all prisoners, including those convicted of sexual offences.

Further consideration of normative guidance applying to detention standards in Africa, for example Kampala declaration on prison conditions, the Robben Island Guidelines (African Commission on Human and Peoples' Rights, 2008) aligned to the Basic Principles for the Treatment of Prisoners (United Nations, 1991) and the Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (United Nations, 2016) by the Malawian government in terms of resourcing and implementation is warranted. Guiding principles directly relevant to people in prisons contained in the Malawi Health and Sexual and Reproductive Health Rights Policy (2017–2022) centre on the adoption of a human rights and equity-based approach to support equality rights, right to health and access to healthcare (Ministry of Health Malawi, 2018). This includes the protection against sexual violence and exposure to disease, with HIV status deemed a prohibited ground of discrimination by the courts (Malawi Industrial Relations Court, 2005). The Malawi Penal Code prohibition of same-sex relations substantially inhibits disclosure of sexual assault in prisons, as a claim of rape infers that sodomy has occurred resulting in arrest, and discipline within prisons via Part XIV of the Malawi Prison Act for offences under Section 89 ("disorderly and indecent behaviour"). This, along with the vagueness of Section 25 and 30 of the Prison Act which provide for access to healthcare in prison, and the detection and notification of disease outbreaks, does little to tackle and address prison dynamics of same-sex sexual violence inter alia attempts to reduce HIV and STI transmission (Currier, 2019; Van Hout et al., 2022). The Malawi Law Commission has criticised the government regarding prison congestion, for the lack of vigilance around the health of prisoners, inadequate medical examination on entry and insufficient clinical competency of health staff (Malawi Law Commission, 2018). It has recommended that a new Prisons Act would require mandatory medical examination, including screening for infectious diseases upon admission and appropriate healthcare responses.

In order to prevent HIV transmission in prisons, advocacy efforts by United Nations agencies and the National AIDS Programme are warranted to further sensitise the government (and Malawi Prison System) to resource, deliver and scale up the United Nations HIV comprehensive package of 15 interventions in Malawian prisons (United Nations Office on Drugs and Crime, 2020). The issue of same-sex sexual activity in prison and people in prison as identified key population at risk of HIV must be included in future HIV/AIDS domestic actions (Van Hout et al., 2022). See Table 1.

In addition, situational sexual violence prevention strategies would assist (Smallbone & Cale, 2016). Practical examples include: robust confidential reporting mechanisms of sexual assaults, awareness raising of staff and prisoners access to single cell accommodation, high level of out of cell time with access to positive activities, and effective prison management, condom and lubricant provision are an imperative, despite the observed politicised fears of promoting same-sex sexual activity in prison. Malawi can leverage the lessons learnt and best practices from Lesotho and South Africa, the two countries which have several years success and experience implementing condom programmes (Lesotho) and condom and lubricant programmes (South Africa) (United

Table 1. HIV prevention, testing, treatment, care and support in prisons and other closed settings: a comprehensive package of interventions (United Nations Office on Drugs and Crime, 2020).

Prevention of HIV, HBV and HCV
(1) Information, education and communication
(2) Condom and lubricant programming
(3) Prevention of sexual violence
(4) Needle and syringe programmes and overdose prevention and management
(5) Opioid substitution therapy and other evidence-based drug dependence treatment
(6) Prevention of transmission through medical and dental services
(7) Hepatitis B vaccination and prevention of transmission through tattooing, piercing and other forms of skin penetration
(8) Post-exposure prophylaxis of HIV
HIV, hepatitis diagnosis and treatment
(9) HIV testing and counselling services
(10) HIV treatment, care and support
(11) Diagnosis and treatment of viral hepatitis
Prevention, diagnosis and treatment of TB
(12) Prevention, diagnosis and treatment of tuberculosis
Gender responsive services
(13) Sexual and reproductive health
(14) Prevention of mother-to-child transmission of HIV, syphilis and HBV
Occupational safety and health
(15) Protecting staff from occupational hazards

Nations Office on Drugs and Crime, 2015). Conjugal visits are also advised to be considered. Conjugal visitation rights remain equally ignored in prison health policy debates and practice in Malawi and beyond across the African continent (Kajawo, 2021a, 2021b).

All future programming is advised to be evidence based and include trusted NGOs, and former prisoners and prisoners in planning, cognisant of the crucial role of prisoners themselves in ensuring successful harm reduction interventions in prison (UNODC, 2015). Stakeholders, both professionals and former prisoners referred to the visible signs and symptoms of both sexual assault, chronic infection and internal damage, and symptoms associated with HIV and STIs (for example skin rashes). Whilst healthcare staff in Malawi prisons are striving to deal with the chronic ill-health, including malnutrition of prisoners, and provide information on HIV/AIDS, and HIV testing, treatment and care, efforts are warranted to include a more robust medical responses to acute (including sexual assault) and chronic ill health related to sex between men. Here the existing HIV testing and counselling, treatment, care and support provided in prisons could be complemented by inclusion of post-exposure prophylaxis of HIV (PEP) which is an emergency course of medication designed to prevent HIV acquisition (United Nations Office on Drugs and Crime, 2020). At present, efforts to support information and awareness raising around HIV risks in prisons are not conducted by government, and peer education programmes (for example the “Inmates Anti-AIDS” club at Zomba prison) are initiated by prisoners from within prison confines, and operate in isolation from mainstream prison system programmes (Currier, 2020). Foundations for change can also include sensitisation of prison staff, training, advocacy, and awareness raising to protect prisoners from sexual violence and disease and promote their health and well-being in prison. Additional investment in prison health surveillance linked to public health data systems, and routine situation assessments are recommended.

The study is ultimately intended to lend a voice to prisoners themselves (“Nothing about us, without us”) to inform efforts to tackle HIV transmission in Malawian prisons, and support the prevention of sexual violence, including poverty driven survival sex. But, as with all research it is not without its limitations. We recognise that our work is sensitive and undertaken within a context of substantial social, political, and economic fragility. This without doubt will have had an impact on our participants ability and willingness to speak freely. While we offered protection in terms of full anonymity and confidentiality, we recognise peoples’ lived experiences may preclude them from speaking as openly as we would expect less threatening contexts to allow. Likewise with the

former prisoner sample, we did not ask them to disclose their own lived experiences of sexual activity while in prison, but instead share what they observed and were aware of while in prison. While this approach was adopted to limit the degree of potential participant distress by taking part in the study, by not drawing on first-hand experience, our study is limited to second hand reports. Despite our reasonable sample size (for a qualitative study), studies that examine the nature, scale and prevalence of sexual violence in prisons across the Malawian estate are very much needed. Investment in prison health research, including a focus on HIV and same-sex sexual relations across other African countries is warranted to ensure evidence-based prison health programming (Mhlanga-Gunda et al., 2020).

Conclusion

The cross-cutting nature of human rights, public health (including tackling HIV) and ending the discrimination of gay men and other MSM is evident (UNAIDS, 2022; United Nations Human Rights Committee, 2011) and includes people deprived of their liberty. The “KwaZulu Natal Declaration” (Global Faith and Justice Project, 2015) advocates for the elimination of sodomy laws, and the protection of all citizens, including all communities affected by, and living with HIV/AIDS. Human rights organisations have an important role to play in calling on the Malawi government to abide by its 2012 commitment and decriminalise consensual same-sex conduct, and on Parliament to repeal all anti-homosexuality provisions in the Penal Code. This can open the door to evidence-based harm reduction programmes in prisons. Cultural sensitivities and legal frameworks combined create substantial barriers to help-seeking and disclosure of rape in prisons in Malawi, and elsewhere in Africa. Tackling sexual violence and transmission of HIV in prisons is a joint public health and human rights imperative given the bridge of transmission between prison and community (Van Hout et al., 2022). The time is now for Malawi to pave the way by developing a prison system which recognises and upholds the humane treatment of prisoners and protects them from coerced and transactional sex, HIV and STIs.

Note

1. Algeria, Burundi, Cameroon, Chad, Comoros, Eritrea, Eswatini, Ethiopia, Gambia, Ghana, Guinea, Kenya, Liberia, Libya, Malawi, Mauritania, Mauritius, Morocco, Namibia, Nigeria, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe. Source International Lesbian, Gay, Bisexual, Trans and Intersex Association (2020, p. 325).

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