

Public Opinion, Press Coverage and the Pempho Banda Case: Contesting Sex Work  
Criminalization in Malawi's Developing Tourism Sector

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ABSTRACT

When police arrested nineteen women in Dedza, Malawi hospitality locations in 2016, it was under the guise of the living on the earnings of prostitution laws. The women appealed and won their case, with the ruling judge noting that Malawian women are free to patronize any hospitality facilities or bars without fear of being arrested. The case, *The Republic v. Pempho Banda and 18 Others*, sparked a national debate over the social and legal status of sex workers in the southern African country. It also brought to light that efforts to stimulate tourism had inadvertently boosted the country's sex work industry. To move away from a reliance on agriculture and bolster socio-economic growth and its foreign exchange earnings, the country is positioning itself to gain a greater market share of visitors. However, as in many tourist destinations, the promise of sex attracts tourists, and sex is increasingly becoming a central offering of Malawi's tourism industry. Yet, Malawian sex workers continue to occupy a social status in which they are marginalized or mistreated by the general public and criminal justice system. This provides apt conditions for continued and increased human rights abuse against sex workers. This research explores the events, legal environment, media coverage, and public opinion surrounding this case and its relation to the tourism industry. The data is from interviews with actors in the criminal justice system, documents and an analysis of online media about the Pempho Banda et al. case. My dissertation highlights the complexities and contradictions surrounding sex work in Malawi. In doing so, I hope to intervene in the national debate surrounding sex workers so as to facilitate public opinions and policies that are more sex worker friendly and protective of their human rights.

# Public Opinion, Press Coverage and the Pempho Banda Case: Contesting Sex Work Criminalization in Malawi's Developing Tourism Sector

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## GENERAL AUDIENCE ABSTRACT

When police arrested nineteen women in Dedza, Malawi hospitality locations in 2016, it was under the guise of living on the earnings of prostitution laws. The sex workers appealed and won their case, with the ruling judge noting that Malawian women are free to patronize any hospitality facilities or bars without fear of being arrested for sex work in what are traditionally considered male spaces. The case, *The Republic v. Pempho Banda and 18 Others*, sparked a national debate over the social and legal status of sex workers in the southern African country. It also brought to light that stimulating tourism inadvertently boosted the country's sex work industry. To move away from a reliance on agriculture and bolster its foreign exchange earnings, the country is positioning itself to gain a greater market share of visitors. However, like in many tourist destinations, the promise of sex has attracted both foreign and domestic tourists, thereby progressively promoting sex as a central offering of Malawi's tourism and hospitality industry. Yet, Malawian sex workers continue to occupy a social status in Malawi in which they are marginalized or mistreated by the general public and within the justice system. These conditions result in continued and increased human rights abuse against sex workers. The Pempho Banda et al. case is a seminal case that assists us in examining the legal and social status of sex workers in this context. This research explores the events, legal environment, media coverage, and public opinion surrounding this case and its relation to the tourism industry. This is done using interviews, documents, and an analysis of online media coverage about the case. I contend that discriminatory laws, policies, practices and sentiments targeting sex workers need to be redressed. My findings imply that a decriminalization approach will advance sex workers' rights more than criminalization or legalization. Unequivocally, decriminalizing sex work is likely to be met with resistance from the public; however, there is sufficient evidence from public opinion, media coverage and statements from criminal justice system members connected to this case that suggest the existence of support for enacting protective policies for sex workers. Furthermore, since evidence shows a correlation between increased tourism and sex work, I argue that Malawi needs to prepare practical policies that factor in this reality.

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## LIST OF ABBREVIATIONS

AIDS	Acquired Immunodeficiency Syndrome
ARVs	Antiretrovirals
CEDEP	Centre for Development of People
CASAM	Center for Advocacy on Stigma and Marginalization
CHRR	Centre for Human Rights and Rehabilitation
CHREAA	Centre for Human Rights Education, Advice and Assistance
COWLHA	Coalition of Women Living with HIV and AIDS in Malawi
FSWA	Female Sex Workers Alliance
GDP	Gross Domestic Product
HIV	Human Immunodeficiency Virus
IMF	International Monetary Fund
LGBT	Lesbian, Gay, Bisexual and Transgender
MGDS	Malawi Growth and Development Strategies
MASWA	Malawi Sex Workers Alliance
MK	Malawi Kwacha
NGO	Non-Governmental Organization
OSISA	Open Society Initiative for Southern Africa
PEPFAR	President's Emergency Plan for AIDS Relief
SALC	Southern African Litigation Centre
US	United States
UN	United Nations
UNAIDS	Joint Programme on HIV/AIDS

## CHAPTER 1. INTRODUCTION

### *Statement of the Problem*

The purpose of this study is to investigate the legal and social environment surrounding sex work in Malawi as well as to explore the possibilities for enacting policies and laws that are more sex worker friendly. This is important because globalization-led tourism growth is being encouraged as a catalyst for development in African countries such as Malawi; however, sex workers who work in the industry continue to occupy a social status in which they face marginalization, discrimination, and human rights abuses within the justice system and by the general public (Chizimba and Malera 2011). The data for this study will come from individuals working in Malawi's criminal justice system, an analysis of media coverage, online public commentary on covered stories and available court documents. This data will be used for qualitative social science research to construct a grand narrative of the Pempho Banda et al. case using narrative content analysis. The findings will provide insight on the social, economic, and political themes that inform Malawian opinions about sex work and sex work legislation.

In 2016, Malawian police arrested nineteen sex workers in Dedza at hospitality locations and charged them for living on the earnings of prostitution; however, sex work is not explicitly illegal in the country. They appealed and won their case, with the ruling judge noting that Malawian women were free to patronize any hospitality facilities without fear of being arrested in what traditionally are considered male spaces. The case, *The Republic v. Pempho Banda and 18 Others*, sparked a national debate over the social and legal status of sex workers. This dissertation explores the events, environment, media coverage, and public opinion surrounding this case and its relation to the tourism and hospitality sector. In efforts to stimulate tourism, the country "inadvertently" boosted its sex trade industry. Tourism growth was touted as the engine of growth for African nations by multi-lateral organizations. As such, the Malawian government positioned itself to gain a greater market share of tourists in order to move away from a reliance on agriculture and bolster its foreign exchange earnings (Sindima 2002). As in other destinations that had been scaling up tourism, sex work activity became more visible, rendering sex an increasingly central tourism offering in Malawi. Sex workers at hospitality locations increasingly became victimized by both the public and the justice system, albeit the profession being integral to tourism and the hospitality industry.

This dissertation highlights the complexities and contradictions surrounding the legal, social and working environment surrounding sex work in Malawi. I contend that discriminatory laws, policies, practices and sentiments targeting sex workers in the tourism industry need to be redressed. I highlight the existing social attitudes toward sex work in Malawi. Furthermore, I propose that sex work policies in Malawi be decriminalized and that they anticipate how tourism escalation will facilitate the sex trade. In doing so, I hope to intervene in the national debate surrounding sex workers to introduce the possibility for sex worker friendly public opinions and policies.

### *Literature Review*

#### Background

Malawi is a land-locked country with pre-colonial roots in the Maravi Empire, a large trading area in southern Africa. The colonial era was ushered in by Scottish born missionary David Livingstone whose prolonged contact with the region introduced British ideas of religion (Christianity), notions of civilization, and forms of commerce. Eventually the territory came under British rule and became known as British Central Africa then later Nyasaland. Nyasaland was incorporated into the Federation of Rhodesia (present day Zambia and Zimbabwe) and Nyasaland. Malawi was a source of migrant workers to southern Africa. Relative to its neighbors, there was little attempt by the British government to economically “develop” the country beyond small scale tea, tobacco, and cotton farms; this contributed to discontent about its incorporation into the federation. The federation’s dissolution became one of the catalysts for Malawi’s independence movement. Dr. Kamuzu Banda, a medical doctor, led Malawi’s independence movement and in 1964 acceded to Presidency (McCracken 2012, UN 2014, World Bank 2018a).

Shortly thereafter, Banda formed the Malawi Congress Party (MCP) -- a one-party dictatorship with his strict surveillance and the notion that: “everything is my business. Everything. The state of education, the state of our economy, the state of our agriculture, the state of our transport, everything” (Meredith 2013). His control extended to private life through his legislation of a moral code promoting “decency” which included censorship of western media, movies and books. Men were forbidden to wear bell-bottoms, afros or dress like hippies. Women were expected to dress conservatively and were forbidden from wearing miniskirts and

trousers, except in hospitality locations frequented by western tourists. Any form of dissent was not tolerated (Meredith 2013). Those who opposed him or flouted his laws disappeared, fled or were killed. He remained in power until political pressure and discontent forced him to step down in 1994. Since then, Malawi has had stable governments run by four democratically elected presidents: Bakili Muluzi, Bingu wa Mutharika, and Joyce Banda; the latter is to date one of only two female African heads of state. Dr. Peter Mutharika, a Yale educated lawyer, is the current President and has been in power since the 2014 (McCracken 2012, UN 2014, World Bank 2018a).

Malawi has a population of nearly twenty million people. The population is made up of several ethnic groups including the Chewa, Lomwe, Tumbuka, Yao, Ngoni, Tumbuka, Sena, Mang'anja, Tonga, Nyanja, Nkhonde, and other smaller groups. The primary religion is Christianity (80 percent are either Protestants, Catholics, or other Christians). Muslims make roughly 13 percent of the population and the remainder either follow other religions (including indigenous religions) or are atheist. The estimated average income per person is the equivalent of US\$320 dollars. Currently, 80 percent of the population lives in rural areas and relies on subsistence agriculture. One in two rural inhabitants live in poverty (UN 2014, UNDP 2018b, World Bank 2018a, World Bank 2018b). Malawi is an agricultural-based economy with a Gross Domestic Product (GDP) of US \$6.24 billion (2017 est.), with tobacco accounting for more than fifty percent of exports. Being one of the poorest nations in the world, across several economic indicators, the country receives substantial assistance from multi-lateral financial institutions and foreign government aid. Malawi is trying to achieve economic growth under its Malawi Growth and Development Strategies (MGDS); education, energy, agriculture, health and tourism are the current focus of the MGDS (UN 2014, World Bank 2018a).

The government is trying to combat economic restraints by diversifying its cash crops from a heavy reliance on tobacco. Agricultural work does not provide workers with a living wage and the economy remains vulnerable to other external shocks, such as weather, health and environmental factors. Poverty in Malawi remains pervasive—the country ranks 171 out of 189 countries on the 2018 United Nations Human Development Index (UNDP 2018a, World Bank 2018a). According to a Malawi government development document, 50.7 percent of the population lives below the poverty line, whilst 25 percent live in extreme poverty (IMF 2017). Gender and class disparities show that female-headed households are poorer than male-headed

ones; 57 percent of the rural population is poor whilst only 17 percent of urban dwellers are poor. Malawians face a high prevalence of premature death, illness, crop failure and other deprivations, and are left to depend on other methods for survival. Since poverty is so pervasive, sex work has become a viable survival option for some Malawians.

### Sex work

Sex work, commonly referred to as “the world’s oldest profession” or prostitution, exists almost everywhere. Sociologist James Henslin broadly defines it as “the renting of one’s body for sexual purposes” (Henslin 2014:54). It includes the services of “call girls,” “convention prostitutes,” “hotel prostitutes,” “bar girls,” “streetwalkers,” and many others. The most commonly definition used in international policy is the one offered by the Joint Programme on HIV/AIDS (UNAIDS) which defines sex workers as “consenting female, male and transgender adults—as well as young people over the age of 18 years—who regularly or occasionally receive money or goods in exchange for sexual services” (UNAIDS 2015). These definitions though can be criticized for being inadequate as they are too broad and incorporate a wide variety of services, such as erotic dancing, escort services and pornography.

African legal advocates such as Marlise Richter criticize UNAIDS’ organization-wide definition for being too broad, not defining “sexual services,” and not being clear on whether it includes transactional sex (Richter 2012:531). She argues that the definition used in one of its regional workshops in Abidjan provides greater clarity:

[A]ny agreement between two or more persons in which the objective is exclusively limited to the sexual act and ends with that, and which involves preliminary negotiations for a price. Hence, there is a distinction from marriage contracts, sexual patronage and agreements concluded between lovers that could be presents in kind or money, but its value has no connection with the price of sexual act and agreement does not depend exclusively on sexual services. (Richter 2012:532)

Richter contends that this definition is more specific. It is also consistent with the definition offered by African human rights activist Chi Adanna Mgbako: sex workers engage “the in-person physical exchange of sexual services for money or goods” and is what is traditionally thought of as prostitution (2016:16). This is the operational definition I will use for this study because it is neither too broad nor too narrow to provide an accurate description. It accurately describes sex workers in Africa and the services provided by those accused of engaging in sexual exchanges in the Pempho Banda case.

The three main types of formal sexual exchanges that are distinguished are commercial sex work, transactional sex, and survival sex (Baird and Ozler 2016, Richter 2012). Sex work as discussed in the above operational definition is sex in exchange for money. It is a strictly financial arrangement where the client—or sex worker’s John— pays the sex worker an agreed fee for sexual services. Through this arrangement, sex workers are paid immediately, engage with multiple clients, and self-identify as a sex worker. Transactional sex also occurs when there is a financial arrangement, but the exchange is friendship, affection, or romance, thereby blurring the lines of what should be considered sex work. Through this exchange, individuals are more likely to perceive themselves as being in a girlfriend-boyfriend relationship—payment may come over time or involve material gifts instead of money. Survival sex is characterized by an attempt of individuals in the direst conditions or abject poverty to minimize the impact of poverty. In Malawi, it often includes practices like sex for fish, shelter or other goods. It is viewed as a coping strategy for women in abject poverty because the direct need for material support influences their decision to accept sexual proposals from men (Baird and Ozler 2016, Henslin 2014, Richter 2012).

There are blurred lines between commercial sex work, transactional sex, and survival sex. Baird and Ozler (2016) noted that transactional sex can be seen as a survival strategy or coping mechanism for poverty. Similarly, since most sex workers in Malawi typically do so to alleviate abject or relative poverty they can be viewed as engaging in survival sex. However, this study concerns itself with commercial sex work and uses the term *sex workers* to describe this type of sexual exchange. This study does acknowledge that this term is contested by anti-sex work activists who argue that it can never be *work* (Mgbako 2016, Weitzer 2006). In spite of criticism, African sex workers want to be recognized as sex workers. They make it clear that sex work is their profession, that they get paid for providing a service and that they need to be respected (Richter 2012:534). In order to align with their demands and language commonly accepted by international human rights organizations and non-governmental organizations (NGOs), the study will use the preferred term *sex workers*. The term “prostitution” is used when the situation necessitates (e.g. when quoting or paraphrasing individuals, legal and public documents).

#### Sex work in Malawi

Malawian sex workers represent a cross section of women ranging from ages 16 to 29. Ethnically diverse, they are primarily from Malawi, with some coming from neighboring

Tanzania, Mozambique, or Zambia. They are primarily Christian, but some identify as Muslims or atheist. The majority of women are single or separated from their spouses and have primary or secondary school education; a few have some college education. Many entered the profession whilst still living with parent(s), grandparents or siblings, and moved from poor rural areas to in search of employment opportunities. Malawian sex workers also enter the trade due to becoming orphaned, loss of marriage, peer pressure, or as the result of alcohol and substances abuse. Some initially try selling *mandasis* (Malawian doughnuts) or tomatoes in the market but cannot earn a living wage, then turn to a more viable form of employment option – sex work. Others try to find alternative employment solutions by applying for micro credit loans or alternative income generators but often are discriminated against and rejected, making it hard for them to not pursue sex work or leave the trade (Chizimba and Malera 2011, Kishindo 1995, Tavory and Poulin 2012). Although Malawian sex workers also include males and transgender individuals, this demographic is not the focus of this study.

Getting the exact number of Malawian sex workers, a marginalized, hidden, and mobile population, has been challenging. Currently, there are an estimated 55,000 sex workers in the country (CSJ 2017, Chizimba and Malera 2011). They include those engaging in commercial sex work, transactional sex and survival sex (Baird and Ozler 2016). Although it is well documented that transactional sex is common in Malawi, this study is concerned with commercial sex workers – street, night club, lodge, tavern, hotel, salon, restaurant, bottle store, bar, and other sex workers who are visible in what are considered male spaces (Baird and Ozler 2016:165). *Bar girls* are employed in bars, bottle stores, or rest houses with commercial establishments that serve alcoholic drinks but also often allow males to purchase sexual services. The business owners pay the sex workers minimum wage and perceive them as being good for business because they attract paying male clients. Often, the sex workers live or rent rooms at the establishment, so the sexual exchange occurs in rooms nearby. They differ from what Henslin refers to as “hotel prostitutes” who work out of a hotel and share their fees with employees who assist them by directing clients to them (2014). They also differ from so called *Freelancers* who are transient and do not live at the place of business but work in nearby bars or streets (Baird and Ozler 2016, Kishindo 1995, Van den Borne 2005).

The highest numbers of sex workers are in urban areas, including the nation’s capital (Lilongwe) and the primary commercial city (Blantyre). Others work in tourist destinations or

lake shore districts ( e.g. Mangochi, Salima, Karonga), border districts (e.g. Dedza, Karonga, Mwanza), transit districts (e.g. Ntcheu), and major commercial fishing/plantation districts (Chizimba and Malera 2011). According to a study by Chizimba and Malera (2011), a high proportion of sex workers are in border districts and the tourist/lakeshore and fishing areas. Dedza is said to have high sex worker numbers due to the proximity of clients from nearby Lilongwe and cross-border traders from neighboring countries such as Mozambique or Zimbabwe. Kashindo also notes that bar girls in border towns benefit from merchandise haulers from countries such as Tanzania and Zimbabwe who are perceived as clients with more money (1995). Their clients vary in profession, occupation, age and marital status, and ethnicity. This includes drivers, farmers, religious leaders, entertainment business owners, DJs and Asian (China, India and the subcontinent) clients.

Sex workers determine their prices on condom usage, amount of time spent with a client and type of services requested, with the most common services being anal, oral, vaginal, masturbation, breast and thigh sex (Chizimba and Malera 2011). Consequently, fees range from MK200 (US\$0.25) – MK2,500 (US\$4), although sites like WikiSexGuide.com state sex workers charge as much as \$35 in United States dollars. Many sex workers use their earnings to pay for basic needs such as rent, food or education for their children and siblings. Hence they may accept payment in the form of corn, cellular phone airtime, groceries, clothes or phones (Chizimba and Malera 2011, Kishindo 1995, WikiSexGuide 2019).

Due to their low socio-economic status, sex workers in Malawi are susceptible to abuse. They are often victims of physical and emotional abuse, rape, human trafficking and arbitrary arrests by the police. Perpetrators of their abuse include clients, police, thugs, street kids, bar attendants, bouncers, DJs and owners of entertainment establishments. Sex workers typically do not report the crimes to police out of fear of retaliation – particularly when the abusers are the police. Police usually disrupt the work of sex workers, force them to pay money to avoid arrest, arrest them without warrant, rape or inflict other forms of unwanted sexual contact, and steal their cellular phones. Sex workers suspect police also interfere with justice by influencing the courts to increase their penalty fees when found guilty (Chizimba and Malera 2011). Discriminatory treatment by police is in part a microcosm of how sex workers are treated by many Malawians.

Sex workers in Malawi occupy a low social status in the society. They are subject to high levels of negative stigma and discrimination from their families, clients, churches, establishment owners, and communities. They are labelled as poor, homeless, immoral and responsible for malaise such as the spread of disease in society (Chizimba and Malera 2011). In a Chizimba and Malera (2011) study, some sex workers reported not being informed about community funerals and others reported becoming the subject of sermons at church. They are often labelled as *uhule*, a derogatory term akin to *prostitute* (at best) or *whore* (at worst). Tavory and Poulin note that many interviewers in their team restricted this term's use for *freelancers* (transient sex workers) only, but not *bar girls* (2012:215). For the purposes of this study, the term applies to all sex workers because many in the country do not make this distinction.

Partially due to stigma, African feminists and gender practitioners have largely been silent on issues of sex work. Discussions about their rights are noticeably absent from deliberations about gender rights (Mgbako 2016, Richter 2012). However, the literature on Malawian sex workers that does exist has focused on defining their relationships with partners or healthcare issues, with the vast majority focusing on the latter. A few studies, such as one conducted by Tavory and Poulin (2012), illustrated how sex workers understand traditional intimate relationships such as *chibwenzi*, an occurrence in which sexual relationships outside of a partnership are sanctioned prior to a marriage and include gift-giving. Topics about sex trafficking and child prostitution are also common. However, child sex work is not included in this study because the sale of sex by children is considered commercial sexual "exploitation" and not sex work (Richter 2012:533). Similarly, human trafficking is not included in this study because it involves those recruited by force, abduction or receipt for the purposes of exploitation is not sex work.

Issues about the legal status, discrimination, stigma or other quality of life factors for sex workers seem to be ancillary to other topics unless it is about healthcare. In a study by Mbewe (2015), findings revealed Malawian sex workers were stigmatized and discriminated against; the study focused on the negative attitude of healthcare workers against sex workers. Similarly, a Chizimba and Malera (2011) study's goal was successful in enumerating sex workers in Malawi and creating a comprehensive profile of them; the study's main motivation though was to examine sex workers' knowledge about human immunodeficiency virus (HIV), acquired immunodeficiency syndrome (AIDS), legal policies, and experiences with healthcare. A study by

Twizelimana and Muula (2015) investigated the perception of sex workers towards their poor treatment, particularly in relation to HIV/AIDS. Another study by Kishindo (1995) explored socio-economic issues and focused on understanding the reasons bar girls enter and remain in the profession in spite of the risks of HIV/AIDS. Similarly, Baird and Ozler (2016) examined whether cash-transfer programs can reduce transactional sex and therefore HIV/AIDS. Other health related studies include Lancaster et al. (2016) and Swidler and Watkins (2007). The main focus of literature seems overwhelmingly be about containing disease. Therefore, this study would be amiss not to comment on how this imbalance in literature may also contribute to stigmatization. Chizimba and Malera attributed sex worker stigmatization to their work conditions, arguing that if the work conditions of sex workers improved so would their societal treatment (2011).

Studies suggest that stigmatization and discrimination are linked to the complex legal environment in which sex workers are criminalized and lack protection (Chizimba and Malera 2011, Kerrigan et al. 2015, Mbewe 2015). Sex work is legal in Malawi in spite of the common view that it is illegal. This lack of clarity even affects research: the Twizelimana and Muula study that focused on female sex workers at risk of acquiring HIV took the approach that sex work is illegal (Twizelimana and Muula 2015:6). In reality, the law does not explicitly criminalize sex work. Section 145 of the Penal Code of Malawi states that the act of a male person living on the earnings of prostitution or persistently soliciting sex is an offence; Section 146 presents the act of a woman who knowingly lives on the earnings of prostitution as an offense; and Section 147 criminalizes the keeping of brothels – including houses, rooms, set of rooms or any place for purposes of prostitution (Chizimba and Malera 2011, Government of Malawi 1930). This includes soliciting, pimping, and operating a brothel, or forced prostitution. Essentially, these laws criminalize brothel owners and pimps and others living parasitically off sex workers. They were not meant to criminalize sex work or individuals engaged in sex work. However, they are often interpreted as criminalizing any engagement in sex work.

The lack of legal clarity and understanding results in sex work being criminalized in various ways, and Malawian laws not adequately protecting the rights of sex workers. Malawian sex workers often are charged with a litany of offenses: engaging in an act that spreads disease that endangers others, being considered Idle and Disorderly, being deemed Rogue and Vagabond, and other crimes. The law does not clearly detail their rights and not much research

has been written about the legal rights of sex workers accused of offenses (Chizimba and Malera 2011). According to Chizimba and Malera (2011) not many studies assess the legal environment or interventions related to sex work in Malawi. The present study unpacks the complexities of vague legislation, stigmatization and the legal status of sex workers in the backdrop of Malawi's burgeoning tourism and hospitality industry.

#### Overview of global tourism and hospitality industry

The travel and tourism industry is a global multi-trillion-dollar industry. Sharpley (2014) defines tourism as “a social phenomenon which involves the movement of people to various destinations and their (temporary) stay there” (18). Due to technological advances and rapid globalization, more people travel internationally for leisure or business each year – the tourism industry has increasingly expanded services since the 1960s in response. By the end of the 20<sup>th</sup> century, tourism was the world's largest industry (Mullings 1999, Pattullo 2005). The World Bank estimated that the total impact of the industry on global GDP in 2011 was US\$6.3 trillion. This was supported by US\$743 billion worth of investments, US\$1.2 trillion in exports and 255 million jobs (Christie et al. 2014:24). Global North to Global South tourism started to increase in the 1970s. With some tourists constantly seeking to explore new destinations, the Global South emerged as focus of attention; the region is seen as possessing “exotic” and “untapped” geographical locations (Pattullo 2005). The Caribbean, South America, and Africa have all experienced increased tourism. The World Bank estimates that nearly US\$339 billion in tourism income goes to emerging economies. Global South to South tourism also started to increase as technology evolved and disposable income rose in the region. Tourism is therefore a profitable industry for all nations - including poorer countries (Christie et al. 2014, Dieke 2003, Mullings 1999).

Most African nations already include tourism as an integral part of their socio-economic development agenda and economic growth strategies. The Organization for Economic Co-operation and Development (OECD) began touting it as a promising resource for economic development as early as 1967. The Lomé Conventions from 1986 through 1990 continued to tout the importance of tourism for developing Africa and the Caribbean. This was backed by the International Monetary Fund (IMF) and World Bank which began providing loans for tourism-related environmental and technical assistance. Encouraged by the relative ease and willingness of multi-lateral organizations to provide funding for the industry over other development

projects, African countries turned to tourism. The tourism industry remains attractive to poor countries seeking to diversify their economies, alleviate poverty, and bolster economic growth or development (Christie et al. 2014, Pattullo 2005).

Indeed, the benefits of tourism have been well documented by businesses, policymakers, researchers and academics. According to tourism author Dieke (2003), at national levels, tourism as an export has the ability to be a major foreign exchange earner, bringing in needed revenues. At the micro-level, it can provide jobs revenue and income redistribution. Considered an integral part of an economic development strategy, some believe tourism encourages growth in other sectors. None the less, it is often overlooked that tourism-led growth is not a stable development strategy for the Global South.

### Critiques to tourism development

Many who criticize the use of tourism for development see it as a Western and neo-colonial approach to economic development. There is no universal definition of the term development; this study uses the one outlined by the United Nations Development Programme (UNDP): “the expansion of people’s freedoms to live long, healthy and creative lives; to advance other goals they have reason to value; and to engage actively in shaping development equitably and sustainably on a shared planet” (Sharpley 2014:22). Moreover, tourism development is a contentious term that is tied to western-style modernization and economic growth: “as the national economy grows, the national productive capacity increases, and as long as output grows at a faster rate than the population growth rate, then development is assumed to be the inevitable consequence” (Sharpley 2014:19). Hence, tourism development approaches are problematic. Since the current political economy is characterized by neo-liberalism, tourism development that encourages opening borders to the market forces and privatizing businesses has been the dominant approach (Bianchi 2009). In fact, early research on tourism development embraced market force ideologies, and major research topics in tourism studies did not include perspectives that challenged uneven global power structures and capital flows.

Criticism within management studies focuses on technical issues associated with planning and tourism development – they highlight profit maximizing inefficiencies in the industry such as lack of tourism infrastructure. They also tend to pinpoint concerns such as environmental degradation and community participation as the primary concerns for the host

countries. These approaches –undoubtedly supported by multi-lateral agencies that push for industry privatization, easier cross-border travel and integrating markets – do not properly grapple with how the combination of technologies and power relations inform tourism production. Nor do they properly engage with how individual entrepreneurs and the private sector are constrained by global power relations. Thus, the entire concept of advocating for tourism for economic growth, foreign exchange, jobs and foreign investment is indicative of a modernization approach to tourism has been criticized (Bianchi 2002, Harrison 2015).

Recent criticism in tourism literature is increasingly examining themes of power, discourse, culture, representation of *the other* and the tourist's *gaze* on the *exotic other*. Particularly in the social sciences, structural issues and issues of power are frequently analyzed. *The Tourist Gaze* by John Urry is regarded as the first study to have started scrutinizing tourism in light of power relations in earnest. Urry argued that there are systematic ways of “seeing” what tourists look at (the “gaze”) and contends that these can be explained (Urry 1990). *The Tourist* by Dean McCannell examined authenticity and the construction of reality (1999). Although he mentions Malawi as an example of a country that has done tourism in a practical way—by engaging with the South African government during the apartheid era—he doesn't problematize the discords of apartheid South Africa or its relationship with Malawi. In both these works, most primary examples are in Global North tourist destinations. However, their ideas are also useful to understanding the African context as tourists learn how to “gaze” at Africa and African bodies through learned social behavior; they learn that Global South is constructed as a playground for rich Global North tourists, particularly when it comes to sex (Urry and Larsen 2011).

The foundation of current academic tourism development critiques rests on variations of world systems, underdevelopment, and dependency theories according to sociologist of development David Harrison (2015:62). Most of these critics come from the Global South. Opponents argue that international tourism is structured in a way that makes developing countries subordinate and unequal partners. This is largely attributed to the impacts of neo-liberal policies that promote the liberalization of international trade, privatization of industry and the opening of borders to international companies, policies that have a negative impact on local communities. They argue that this exchange leaves developing countries economically, socially, culturally, and politically dependent and exploited by their development partners. In particular,

they point to major foreign players in the industry, such as transnational corporations, tour operators, and hoteliers that minimize the profits of local players. The critics argue that foreign players drain wealth by sending money back to their home country, importing foreign goods and materials, and hiring foreign employees for top management jobs (Bianchi 2009, Harrison 2015, Pattullo 2005). They contend that local people have lost access to land, property, resources or their own bodies due to tourism development. Tourism, it is argued, has thereby endangered livelihoods and further marginalized the poor, especially since policy-making decision by institutions cater to foreign investors or the elite. As such, conflicts arise over working conditions and resource allocation for those that rely on the industry for survival. None the less, critics of this perspective point to the higher wages, expansion of jobs and services that tourism brings (Bianchi 2009, Harrison 2015).

Concerns raised by dependency and underdevelopment theorists are typically unpopular worldwide by policymakers and governments. Harrison (2015) argues that exceptions can be found in Cuba, Jamaica, St. Vincent, Grenada and Tanzania who implemented these theories in their tourism policies at some stage. They each adopted socialist tourism models characterized by a focus on self-reliance and local ownership, in order to reduce dependency on foreign capital. Although all of them had different levels of success due to internal and external factors, they all eventually reverted to seeking capitalist foreign investment which increased their dependency on foreign capital in the tourism and hospitality sector (Harrison 2015). The entire Caribbean islands (socialist and nonsocialist) are particularly sensitive to tourism development, because they share a disproportionate amount of the world's tourism traffic and have seen the impacts of tourism on their island nations. As a result, academic and non-academic critics from the Caribbean remain a vital voice. Critics such as Pattullo (2005), Mullings (1999) Phillips (1999) Carter and Clift (2010) and others argue that neo-liberalist capitalist expansion led to uneven and unequal development in the Caribbean and documented the negative consequences of tourism on there. Most contend that the Caribbean situation can be applied to other tourist destinations in the Global South, including Africa. These critiques are relevant to this study because African countries such as Malawi occupy the same position in the global political economy as poor, Black, Global South nations.

## Tourism development in Malawi

Malawi is trying to gain a market-share in tourism. Encouraged by multi-lateral organizations, the government promotes it as a path to development, identified tourism as a source of diversification, foreign exchange and employment and began heavily investing in this sector (Magombo and Rogerson 2012). A small and landlocked county, Malawi is dwarfed by larger neighbors that compete with it for tourists. Its topography consists of a lake, a plateau, rolling plains, hills, mountains, and forest that makes it a prime location for nature-based tourist activities. Lake Malawi covers 20 percent of the country's land mass and has a large natural beach that is a major tourist attraction (Government of Malawi 2017, Magombo and Rogerson 2012). Main tourist activities are nature - or culture-based. Malawi offers sun, sand, sea and safari tourism. The country markets its sandy beaches, hiking, archeological sites, safaris, game hunting and cultural heritage sites. The country is a relatively new player in the industry because tourism was limited during the Kamuzu Banda era. Consequently, the current infrastructure cannot support mass tourism (Government of Malawi 2017, Kibicho 2012). However, the pristine landscape is increasingly attractive for tourists who seek "untapped" vacation destinations.

Despite the growing recognition as a tourism destination, there is little academic writing about Malawi tourism (O'Hare 2018). In part, this may be due to the long absence of a tourism department at local universities; a tourism program at the University of Mzuzu opened less than 10 years ago. The only available essay that provides a survey of the history of tourism in the country is by Magombo and Rogerson (2012), "The Evolution of the Tourism Sector in Malawi"; it provides a historical account of tourism policy. Some existing literature indicates that the Malawi's tourism industry is following the same trajectory as the Caribbean. For example, when Snyman (2012) and Gartner and Cukier (2011) examine the impact of tourism employment on poverty reduction in Liwonde National Park and Nkhata Bay, both studies concluded that those working in the tourism sector experienced better working and monetary conditions but did not improve their status in other poverty indicator areas. Kamanga and Bello (2018) considered the impacts of tourism on the community by focusing on corporate social responsibility programs and found that tourism companies did not engage in practices that reinvested in the local economy or community. These studies begin to reflect some of the drawbacks of tourism development that dependency and underdevelopment critics point to as

problematic. However, post-colonial perspectives are not primary theoretical frameworks in these studies.

Studies which privilege dependency and underdevelopment perspectives on tourism development in Malawi are sparse. Tourism research tends to focus on managing or “sustaining” tourism and includes topics such as clinical tourism in Wendland (2012), voluntourism in Freidus (2017), and changes in accommodation services in Magombo, Rogerson and Rogerson (2017). The literature available on Malawian tourism is still largely within neo-liberal modernization approaches. Critiques to tourism development in African literature in general seem to be focused on alternative tourism development (particularly, eco-tourism, volunteerism or big game-hunting tourism), sustainable development or technical improvements. These still place emphasis on market ideology. Current literature primarily problematizes tourism by addressing ways in which Africa can continue to attract, increase and manage tourism. Early works such as Schneider (1976) explicitly argue that African nations need to have a good relationship with the markets to thrive in the tourism industry. Dieke (2000)’s edited volume focuses on building “sustainable” tourism but does not engage issues of global inequality and power from post-colonial perspectives.

Dieke (2003) starts to articulate some of the inequalities in African tourism by noting that it has led to the “destruction of social patterns, neo-colonialist relationships of exploitation and dependence, [and] inflationary pressure” (Dieke 2003:288). He further adds that facilities or services alienate local inhabitants from their land and limit interactions between tourists and residents. Similar to the Caribbean, businesses are largely foreign owned, and money from the airlines, hoteliers, tour operators, and travel agents are handled overseas. It is not reinvested in the country. Additionally, he argues that multi-national corporations and tourists stand to benefit the most whilst local communities are marginalized. Bello, Lovelock and Carr (2018) make similar observations about local communities in Malawi not being a part of the planning process nor encouraged to be part of such a process. In spite of the malaise of tourism development, theories of underdevelopment and dependency applied to Malawi are still sparse. Despite Bello et al. (2017) describing common criticism and negative perceptions of tourism by Malawian residents, they present neo-colonial theories (including dependency theories) as anomalies and do not seriously engage with limitations due to global power inequalities: “one extreme

perception of tourism development and its effects is the view that it is a form of colonialism and imperialism” (7).

The Bello et al. (2017) study is one of the few to seek to measure the opinions and attitudes of Malawians towards tourism. Although the buy-in of local communities is important in sustaining tourism, few other studies have considered resident attitudes ancillary to their research goals and the majority have been on the Global North (Harrill 2004). Those on Africa have focused on more established tourist destinations such as Ghana, Uganda, and South Africa (Chili 2015, Lepp 2008, Sirakaya, Teye and Sönmez 2002, Teye, Turk and Sönmez 2011). Bello et al. (2017) examines residents’ perceptions of the impacts of tourism in Mangochi, Malawi. The researchers identify two major negative societal impacts of tourism in that area: increased migration of people to the area in search of jobs and the influence of Western visitors on local culture (Bello et al. 2017). However, they do not engage with issues of global power nor the elite, although tourism is structurally a part of a foreign economy that is held together by law and order directed by a small group of local elites (Hall and Tucker 2004, Kibicho 2012). When asked about sex work, residents in the study reported more sex workers moving to the area as tourism infrastructure such as hotels and entertainment places scaled up. Beyond this, literature regarding attitudes of Malawians towards tourism development and sex workers is sparse. The present study adds to this literature by starting to unpack these attitudes through newspapers and online commentary.

### Sex tourism in the tourism and hospitality industry

It is hard to rigidly separate “sex tourism” from other forms of travel and tourism that include sex because partly because sex tourism is hard to define. It can encompass a variety of complicated romantic or casual sexual relationships in exchange for money or other benefit. It may also involve various contexts such as safari, hospitality or events that may not be easily associated with sex tourism (Carr 2016, Carter and Clift 2010). Carter and Clift (2010) define what is typically referred to as “sex tourism” as “travel for which the main motivation is to engage in commercial sexual relations” (6). Although this is the common understanding of the term, it is narrow and based on intent; it is difficult to discern at which point a person becomes motivated to engage in sex as a tourist. As such, some researchers distinguish between “preferential” sex tourists and “situational” sex tourists. Preferential sex tourism is travel with

the clear intention of engaging in sex with locals whilst “situational” or “incidental” sex tourists may not initially intend to have sex with locals but engage in sex if the opportunity presents itself (Carr 2016, Green, Scrase and Ganguly-Scrase 2017, Phillips 1999). For the African context, Kibicho (2012) offers another commonly used definition for sex tourism that does not distinguish between preferential or situational but acknowledges that sex can be the main motivation or a partial objective: “tourism for which the main motivation or part of the objective of the trip is to consummate or engage in commercial sexual relations” (17). This definition is not without its flaws as well, which is why other researchers increasingly avoid the term “sex tourism” altogether, opting for terms like “sex in tourism,” “sex and tourism” or “tourism-oriented prostitution” which they argue includes a broader range of sexual activities within the tourism industry (Carr 2016, Kempadoo 1999). Since this study does not examine the clients’ motivations or other activities, sex tourism will be defined as: travel or tourism for which the main motivation or part of the trip involves engaging in incidental (situational) or planned (preferential) commercial sexual relations. This definition is suitable because “travel” includes local clients who may otherwise not consider themselves as tourists but may be travelling to another part of their country for other purposes and may become motivated to engage in sex work.

The need for research on sex tourism is imperative because governments are increasing their reliance on tourism derived income. The extent and reach of the sex tourism industry has been hard to quantify because gathering accurate in-field research involves connecting with a trade that is often illegal or semi-legal and poses other challenges (e.g. cultural stigma). However, many studies have shown a link between the sex trade and tourism (Carr 2016). Shaw and Williams (2002) argue that tourism development creates a favorable environment for sex workers (103). Other studies have shown a positive correlation between scaling up tourism and increased sex work. This has included increased sex work near foreign military bases, coastal regions, entertainment places, near railroads and other places frequented by tourists in the developing world. Whereas it may be difficult to claim or prove causation, the studies clearly show that where tourism has flourished sex work has intensified (Carr 2016, ILO 1998, Kibicho 2012, Mbaiwa and Darkoh 2009, Omondi 2003). Similarly, Kibicho (2012)’s seminal work uses Kenya as an example to argue that tourism and the sex-trade have merged in the African context.

Additionally, Mbaiwa and Darkoh (2009) observed that the number of sex workers in the Okavango, Botswana increased with tourism development.

The sex tourism industry is characterized by a range of arrangements between tourists (local or international visitors) that are both gendered and racialized. Research shows that the industry is structurally gendered – scholars argue that travel has historically been an activity that due to labor market conditions allows men to afford the luxury of travel for sex with woman who are economically downtrodden. Much of the literature has focused on women sex workers but recent years have seen the increasing publication of studies on male sex workers with their female or male clients—particularly in the Caribbean context where “rent-a-dread” culture is more prominent (Carr 2016, Carter and Clift 2010, Kempadoo 1999). Sex tourism is also racialized in that a large percentage of sex customers seek sex workers whose racial, national or class identities are different from their own. Wealthy clients are typically White, Global North residents who engage with poor and Black or Brown sex workers. Consequently, the Global South becomes an area where sexual fantasies of the “other” can be realized (Davidson and Taylor 1999, Truong 1990). Black and Brown bodies become sexualized through the tourist gaze, reflecting “a western tradition of equating sexual potency and availability with ‘dark skin’” (Urry and Larsen 2011:68). Sex tourism turns destinations into sexualized places –based on gender, ethnicity, and race—where tourists live out their fantasies; this drives decisions on where to visit.

The governments of countries such as Thailand and the Philippines have allowed their nations to develop into mythological places. Their governments make allowances for some travel agencies that have been known to go as far as offer clients sex tours; the travel agency makes arrangement for the tourists to visit brothels, hotels, and nightclubs offering sexual services as part of a vacation package. This demonstrates that some travel agents and governments play a role maintaining the industry. In South Korea, for example, ministers have applauded sex workers for their contribution to their country’s development (Kerrigan et al. 2015, Truong 1990, Urry and Larsen 2011). In sum, the emergence of tourism and sex-related entertainment, as Truong observes, is an articulation of “a series of unequal social relations, including North-South relations, and relations between capital and labor, male and female, production and reproduction” (Truong 1990:129). Proper analysis of sex in tourism in local destinations needs to consider the global political economy (Carter and Clift 2010).

Despite limited existing research, the circumstances under which tourists seek sex in Africa is well documented. None the less, more research on the legal and social status of sex workers in this industry is needed, particularly in the wake of a growing global tourism industry and increased tourism development in Africa. Additionally, literature that complements the underdevelopment and dependency theory critiques by Caribbean scholars is needed for the African context (Jacobs 2010). This study adds to this body of research by considering sex tourism in the Malawian context, where sex tourism is a relatively new phenomenon compared to countries such as Kenya, Gambia, and Egypt.

#### Sex in tourism in Malawi & sex tourism

As Malawi expands its tourism industry, controversies centering on the sex trade will become more prominent. Malawian newspapers have reported both the growth of “beach boys” culture and increased numbers of women sex workers in Malawi ("Sex tourists' Warned in Malawi" 2015, "Sex Tourism Booms - White Female Tourists Target Malawi Beach Boys" 2015). Child sex tourism and trafficking has also been increasing in popular tourist destinations such as Chilumba, Nkhata Bay, Nkhotakota, Monkey Bay, Salima and Mangochi. These trends underscore the need for research on sex work in Malawi, especially within the tourism sector. Malawi’s sex tourism industry is void of organized sex tours by travel agencies or operators. Generally, the country also does not have publicly known massage parlors with sexual services, a pornography industry, strip clubs, sex shops or the like. Brothel-based sex work is not common either, as brothels are illegal. The majority of sex work in the country takes place in the tourism and hospitality industry at lodges, rest houses, hotels, tourism resorts, bars, at the lake shore and so forth (Bisika 2009, ILAB 2009, Chizimba and Malera 2011, Kishindo 1995). A few studies in Malawi have linked such tourism facilities with sex work. Research by Bello et al. (2017) and Chilembwe (2014) on tourism in Malawi both mention that sex work has increased in Mangochi with the growth of tourist facilities. Local residents reported that whilst sex workers were always present, an increased number moved to the area as infrastructure developed; the sex workers, they added, were primarily patronized by domestic tourists who were in the area for business meetings or conferences. This is consistent with studies such as which explore domestic sex tourism and with trends in other areas such as Kenya and Botswana where tourism created an

environment more conducive to sex work (Bisika 2009, Clift and Carter 2010, Kibicho 2012, Mbaiwa and Darkoh 2009).

The Malawian Ministry of Tourism commissioned one important study highlighting the behavior patterns of employees in the tourism industry. Bisika (2009) study collected data on sex in the tourism industry as a way to determine the sexual and reproductive health needs of employees in tourist destinations. This was motivated by the finding of employees working in tourism to be more susceptible to sexually transmitted infections (STIs) since they were more likely to engage in sexual activity with domestic and international travelers. The government wanted to use the information for an intervention program for employees in tourism as well as communities around national parks and resorts areas. The study found that male and female tourists had multiple sexual encounters with employees and commercial sex workers, and that they impacted those whose livelihood depends on the tourism industry (Bisika 2009:76). Bisika noted that one of the main tourism destinations in Malawi had reported above average HIV prevalence rates, which he regarded as an indicator of a relationship between sex work, sexually transmitted infections and the tourism industry in Malawi. However, he did not directly refer to employees as sex workers nor did the employees self-identify as such; this underscores the difficulty in defining sex work. Bisika's study concluded with a recommendation of a more comprehensive study of sex tourism.

The Chizimba and Malera (2011) study is the most comprehensive study of sex workers in Malawi, across industries. It is useful in that it created a profile of sex in the tourism and hospitality industry in the country. These investigators identified sex work prevalence in tourist destinations and lakeshore sites such as Mangochi and Salima, and in border areas such as Karonga and Mwanza. Areas like Ntcheu were identified as transit districts that facilitate travel and attract sex workers. They also identified the relatively high population of sex workers in the border districts of Dedza and Mchinji, and argued that this underscores the mobile and transitory nature of sex workers (Chizimba and Malera 2011). Kishindo (1995) also identifies border towns as areas where haulers from neighboring countries frequent sex workers. Therefore, sex in the tourism and hospitality industry is taking place in obvious tourist destinations (including lakeshore areas sites), border areas, and transit districts where local, regional or international travelers were likely to frequent.

In sum, the literature suggests that sex tourism involves a number of inequalities, including those based on gender, race, ethnicity, age, nationality, socio-economic status, and other factors that pose challenges for Global South countries. In Malawi it involves both men and women, including both heterosexual and homosexual relationships with tourists. Clients include individuals from both the private and public sectors. They are typically wealthy local residents or foreigners of various ethnicities including East or South Asians and Europeans, and from other African countries such as Burundi. However, as noted by Truong, the intersection of sex work and tourism cannot be understood as isolated events resulting from individual behavior or simply as expressions of sexism or racism. They must be understood in the context of the larger operation of relations of power and production in travel (Truong 1990:129). This study begins to locate Malawian sex workers in the context of national and global processes.

### *Purpose of the Study*

#### Key points from the literature

There is a severe shortage in of literature on sex work in the tourism industry or ‘sex tourism’ in Malawi. The topic is largely ignored by government policymakers, advocates and researchers alike. They tend to remain silent about the rights of sex workers. This research will fill a gap in the current research on the social and legal status of sex workers in Malawi across multiple fields. First, it will be the first study to unpack the narratives from public opinions, news media and advocates about sex workers in the tourism industry in Malawi. This will highlight opinions about the legal and social status of sex work in Malawi from the elite who influence policy. It will also examine sex work in Malawi in the backdrop of the tourism industry. Kibicho (2012) highlights that there are few articles demonstrating linkages between the sex trade and tourism and Africa. He also contends that sex in the tourism industry in Africa needs further contextualization. Much of the research about sex in Africa focuses on public health; therefore, the present study will add to this scholarship by moving it beyond issues focusing on access to health.

Second, not many studies have navigated the nature of the stigma and social marginalization that sex workers face due to their legal status. This research will be the first to examine the dominant framing of such issues in news articles about sex work in Malawi. This adds to studies such as the Hunt and Hubbard (2015) study which examines how the media

frames sex work in South Africa. It also adds to the study by the Center for Advocacy on Stigma and Marginalization (CASAM) which does the same in India (2007). It will also be the first to examine public commentary about sex work in Malawi to unpack the nature and origins of social attitudes from elite Malawians who influence policy decisions. Third, it will begin to examine the legal strategies, interventions and framing of sex workers' rights by the actors in the criminal justice system. It adds to the studies by Ezer and Patel (2018) and that of Kangaude and Mhango (2018) about strategic litigation. In addition, it examines whether these narratives were consistent with the dominant narratives from the mass media coverage of the case and those of the public. Fourth, it advances the debates about the legal status of sex work in Malawi and the best approach for the Malawian context in the wake of renewed calls for decriminalization and legalization of sex work. It further explores what the impact such changes will have on the tourism industry in which they work. It places sex work in Malawi in the backdrop of the global political economy and related processes such as globalization and tourism development.

#### Research questions

My key research questions are:

1. What is the story of the Pempho Banda et al. sex worker legal case, and how were the events in the case informed by Malawi's legal and social environment? And what does this reveal about the nature of sex work in a postcolonial context?
2. What was the dominant framing of the Pempho Banda case in the mass media, what were the primary narratives as expressed in public opinions about the case and what do these reactions reveal about socio-cultural attitudes towards sex work and sex workers in Malawi's tourism sector?
3. How do mass media representations about sex work, such as online news articles, and public comments responding to them, compare to the testimonies and perspectives offered by actors in the criminal justice system who played an indirect or direct role in the case?
4. What does this comparison, as well as the surprising outcome of this case, reveal about the possibilities for decriminalization in Malawi and its potential implications for the tourism and hospitality industry?

### *Conceptual Framework*

The central purpose of this study is to examine how the legal and social environment of women sex workers in Malawi creates apt conditions for their continual abuse and marginalization as well as how the environment in which they work, the tourism and hospitality industry, further contributes to their marginal status. The themes guiding my selection of data sources were the socio-cultural and legal environments. Socio-cultural themes include information about how the sex workers are treated, stigma that they face, and attitudes toward them. Legal status includes what is written in the law (de jure law) and what is practiced by individuals in the criminal justice system (de facto law) with regards to sex workers. Tourism and hospitality are other themes included in the research. As defined above, this includes activities surrounding temporary travel away from one's environment and includes related services.

Sex work and related activities are often constructed in sociology as social problems or issues that need to be solved in society. Formal theories regarding sex work and related activities such as sex tourism are controversial and highly contested. Approaches to sex work range from functionalist perspectives to a number of conflict perspectives. A functionalist approach views sex work as serving a need in society by controlling and channeling sexual behavior to maintain order in society or equilibrium. They see sex work as being a way for sex workers to provide sexual acts that are otherwise not readily available to the customer in a mutually beneficial way. As such, services of sex workers are regarded as an outlet for men (or women) in cases where they cannot establish sexual relationships; cannot find long-term partners, as among travelers and haulers; have broken social or romantic relationships; or want to have sex with specific type of partners. From the sex workers' perspective, sex work is an opportunity for employment that does not require formal credentials in a situation of widespread unemployment (Henslin 2014, Sanders, O'Neill and Pitcher 2018). In sharp contrast, conflict theorists maintain that society is made up of groups with opposing interests who try to gain power using force. As such, conflict theories view sex work as serving the status quo with the dominant groups trying to maintain power by controlling and criminalizing sex work. They argue that women enter the trade due to lack of power and economic inequality (Henslin 2014, Neuman 2011).

Feminist theories are conflict theories with several different perspectives and approaches. Since this study is an attempt to affirm the struggles of the sex workers in Malawi,

the definition of feminism offered by bell hooks, who defines feminism as a “movement to end sexism, sexist exploitation, and oppression,” is most relevant (hooks 2000:37). This definition articulates Black feminist thought in that it takes into account the Black woman’s social, political, spiritual, or economic standpoint which is informed by the interconnection of race, gender, and class. Generally, Black feminists do not hold to White western feminist assumptions that gender and patriarchy are universal categories nor that all women are subjected to the oppression of patriarchy equally or at all. Black feminists argue that that racism facilitates certain forms of sexual objectification possible towards Black women (Agozino 2014, Sloan and Wahab 2000). Patricia Hill Collins argues that sex work represents the economic exploitation of Black women’s sexuality through the intersection of race, class and gender. African feminist Molarra Ogundipe, identifies foreign intrusion (including dependency and religion) and tradition as the most dominant form of oppression facing African women; race and men are ancillary to this (Ogundipe 1987, Sloan and Wahab 2000). Many African feminists and womanists further argue that the binary categories of male and female are Eurocentric. They focus on the liberation of women, but don’t ignore the liberation of other races or men. Many contend that the relationship between men and women in African societies were not gendered nor patriarchal until European intervention (Agozino 2014, Robinson 2007). In spite of the multiplicity of perspectives in defining feminism, Shaw and Lee (2000) identify two core principles underlying all feminisms that are also relevant in the Malawian context. One is that feminisms, taken collectively, constitute a sustained, collective campaign arising from people with shared interests in support of social justice. Thereby feminisms anticipate achieving justice, equality and human dignity for all. Second, it is inclusive and affirming movement that celebrates the achievement and struggles of women and their expressions of femininity (Shaw and Lee 2000).

Selling sex has been a subject of debate among Black, radical, liberal, Marxist, neo-liberal, African and postmodern feminists for years. In spite of the vast literature feminists have produced, two polarizing perspectives emerge as the most prominent and are subsequently represented in public discourses about sex work (Sanders et al. 2018). Feminist debates on sex work are typically divided in to two main theoretical perspectives which are commonly and broadly referred to as pro-sex work (pro-prostitution/sex positive) perspectives which support decriminalization or legalization of sex work and anti-sex work (anti-prostitution) perspectives which support criminalization. The first, the anti-sex work or abolitionist perspectives, are

largely advanced by feminist scholars and activists who recognize the oppression of women as a fundamental political oppression in which women are categorized as inferior due to their gender (Gerassi 2015, Shaw and Lee 2000). As such, they maintain that sex work illuminates the inequalities between men and women. They contend that it is another way in which men exploit, subjugate, degrade and victimize women and focus on the eradication of sex work through criminalization. The second prominent feminist approach to sex work is the “pro-sex work” or “sex-positive” perspective. Proponents attempt to remove obstacles to women’s participation in the existing system through strategies such as changing policies and legal statutes (Shaw and Lee 2000). They regard sex work as a part of the private sphere and do not want governments interfering in the lives of individuals. As such, sex work is viewed as an empowering exchange and expression of free will because sex workers are free to make choices about their own bodies (Beran 2012, Sloan and Wahab 2000). Both perspectives have been problematized for being polarizing.

The abolitionist group includes the perspectives of radical feminists who argue that exploitation in sex work is either for the pleasure or profit of men. Radical feminists such as Catherine MacKinnon argues that, “women are prostituted precisely in order to be degraded and subjected to cruel and brutal treatment without human limits; it is the opportunity to do this that is exchanged when women are bought and sold for sex” (MacKinnon 1993:13). Dworkin (1993) further contends that sex work needs to end because it is dehumanizing to women and is a crime against them. Sex work, to many anti-sex work feminists is intrinsically violent in nature and practice. They argue that the socio-economic conditions force women to enter into sex work and because there are few alternative sources of income in the gendered labor market, women don’t have a choice but to sell their bodies. Anti-sex work authors claim coercion is implied even if the individual is not aware of it. As such, they use terms such as “paid rape,” “sexual slavery,” and “gang rape” to refer to sex work (Dworkin 1993, Weitzer 2005). It follows then that, clients are labelled as “prostitute users,” “sexual predators,” and “batterers.” Prostitution is neither work nor a profession to them, therefore they prefer to use terms such as “prostitute,” “prostituted women,” or “survivors” as opposed to “sex workers.” They contend that sex work can never be organized in a way that minimizes coercion, so some of them encourage its abolition whilst others support partial criminalization (Henslin 2014, Mgbako 2016, Weitzer 2005). Although anti-sex work feminists all ultimately aspire to criminalize all forms of sex work, they are a

diverse group and can also be further split up in to neo-abolitionist (who want to criminalize the buyer, but not the sex worker) and abolitionist perspectives who want to criminalize all forms of sex work (Beran 2012, Vanwesenbeeck 2017).

Another important abolitionist perspective comes from Marxist feminists whose views are similar to radical feminists in that they reject all forms of sex work as a form of oppression against women. Likewise, they regard sex work as violent and call for its abolition or criminalization too. Unlike radical feminists, who see the oppression of women as rooted in gender, Marxist feminists regard the oppression of women as rooted in class. They argue that women's oppression is the result of a male-centric society in which social order is dependent on the ownership of private property (Gerassi 2015). Marx argued that sex workers labor was like that of all other exploited workers. As such, the classical Marxist perspective is that sex work is the result of the capitalist system in which some people are forced to become wage laborers to survive. Thereby, workers become less human and less free to refuse wage labor (Sloan and Wahab 2000). It follows then that Marxist feminists regard sex work as labor and support the notion that all sexual commerce is exploitive. Although they differ from Radical perspectives, they support for abolishing and criminalizing sex work as well (Gerassi 2015).

The pro-sex work or sex positive feminists include the perspectives of liberal feminists. Most liberal feminists are contractarian and believe that sex workers are consenting adults whom, in pursuit of resources or opportunity, choose to sell sex like any other business transaction (Beran 2012). As such many advocate that social attitudes must be reformed create a safe institutionalized occupation. It follows then that many of them think that legislation should enable sex workers to organize, unionize and demand better working conditions just like in any other job (Beran 2012, Mgbako 2016). Many pro-sex work feminists with liberal views such as Mgbako (2016) think that sex workers should be seen as *workers* and not *victims* in need of saviors. Instead, they are active agents determining their own fate through informed choices. Although the contractarians who think sex work is a social contract like any other job dominate the liberal feminist group, some liberal feminists do regard sex work as degrading and objectifying to women (Robinson 2007). Although pro-sex work feminists generally aspire to legitimize sex work, and thereby support legalization or decriminalization policies, they are a diverse group.

Other theories have emerged such as the perspectives of radical sexual pluralist theorists, who argue against hierarchies over any sexual practices. They contend that no sexual behavior is more moral than any other and that there no ideal approach to sex – any sexual behavior among consenting adults is permissible; this includes sex work. They also differ to the viewpoints of radical feminists in that: they conceive sex workers as political figures as opposed to passive bodies; they recognize sex work as work; and like pro-sex work feminists, they believe that the state should not intervene in the lives of sex work when its consensual, Such theories arose in opposition to the binaries approaches (Robinson 2007, Sloan and Wahab 2000).

The dominant feminist approaches to sex work are criticized because many feminists do not fit into the two binary feminist approaches to sex work which are presented as being “pro-prostitution versus anti-prostitution” or in other cases “liberal versus radical” feminists. Sanders, O’Neill and Pitcher (2018) argue that dividing sex workers in to polarizing perspectives is simplistic and ignores the economic circumstances and inequalities between men and women. They also argue that they ignore the diversity of workers in the industry. Authors such as Weitzer (2005) argues that the anti-sex work authors, for example, often make sweeping statements across time and space. He also contends that the current research needs to account for diversity in experiences and working conditions (Weitzer 2005:214).

This study aims to stand in solidarity with sex workers and sex work advocates fighting for their rights. The majority of sex workers want to be recognized as workers, self-identify as “working women” and see their work as a choice, including those on the African continent (Mgbako 2016, Weitzer 2005). Therefore, the study takes the position of sex workers, advocates, and feminists that support decriminalization. Supporting calls by “othered” sex workers who call for decriminalization is important so as not to further marginalize sex workers. Liberal feminist perspectives are influential in promoting pro-sex work perspectives; however, the study recognizes some of the limitations to liberal feminist perspectives. Notably, the notion of regarding sex work as work is problematic because unlike most other professions, sex workers stand a greater chance for abuse, rape or attack or murder in the line of duty (Sanders et al. 2018). However, generally the ideas of liberal feminism are advanced in this study to extent that doing so is beneficial for sex workers.

Other feminist perspectives are useful for this study as well. The perspective of anti-sex work feminists who use domination theories to argue that sex work is based on the domination of

men over women in an oppressive way is important in this study (Gerassi 2015). Although some African feminists argue that inequality was introduced through foreign domination, sex workers face the realities of gender-based discrimination and violence daily. However, the perspectives of African feminists which include foreign culture as another oppressive form of power on African women are useful for this study since Malawi is a poor nation that occupies a peripheral status in the global political economy (Agozino 2014, Ogunديpe 1987). Its position in the global political economy results in the exploitation of poor Malawian women for their labor, typically by wealthier men. Since sex work in Malawi is structured on the intersection of inequalities based on gender, race and class inequalities the ideas of Black feminists are important to this study as well. Sex workers in Malawi enter sex work for economic reasons and their labor is integrated in the informal global capitalist market, making the perspectives of Marxist and liberal feminists important as well. Although, recent scholarship argues for new ways of understanding sex work without adopting either the “exploitation” or “choice” perspectives, they are useful for this study because these dominate policy debates. However, the study will also go beyond these bifurcations by considering sex work in terms of the wider networks in the industry as suggested in recent scholarship that aims to understand sex work in terms of the industries which facilitate it (Sanders et al. 2018). My study aims to bring to the center the preferences of the Malawian sex workers working in the hospitality or other industries who are determining their own fate by starting to organize. Therefore, my approach to sex work for this study is in solidarity with their own struggle to be recognized as workers with rights.

### *Methodology*

#### Research design

To respond to questions, the research design uses methods based on critical social science approaches to qualitative research (Babbie 2010). Critical social science methods are suitable for my research because they involve critiquing and transforming society by revealing “underlying sources of social control, power relations, and inequality” as well as empowering marginalized groups (Neuman 2011:109). According to Neuman, this type of research also aims to expose myths, contradictions, and hidden truths in order to improve people’s lives. Additionally, this study combines elements of feminist methodology in that it advocates for feminist value positions, rejects sexism in assumptions, concepts and research questions, and is sensitive to

power in gender relations in social life (2011). In the tradition of global feminist research, it is sensitive to the importance of women's experience in a global context which considers colonialism and imperialism. Lastly, it is action oriented with an aim to redress social inequalities by facilitating societal justice and transformation (Hesse-Biber 2014). Qualitative methodology was selected because it primarily collects "soft data" such as sentences and words; it relies on context and cultural meaning; and because the study uses a single case (Neuman 2011).

The study's overall analytic method is narrative content analysis. The narrative content analysis combines the theoretical traditions of content analysis and narrative analysis. Content analysis, according to Babbie (2010), is the study of human communication in text such as websites, books, newspapers and laws. It involves counting words or concepts in communication which are systematically recorded and analyzed. As qualitative method, it moves beyond simply counting them to determine the relationship between them, making it suitable for studies examining look at trends in topics or tone in news articles. It is an approach popular among feminist researchers because it can highlight gender inequalities in media and text. It reveals messages that are hard to see with casual observations, including biases, themes, and characteristics of the text (Babbie 2010, Carley 1990, Neuman 2011). According to Neuman (2011), content analysis alone cannot reveal significance; therefore, combining it with narrative analysis helps by bringing out the significant themes of the case.

Narrative analysis is important because it allows the study to draw out the accounts of people involved with the case and/or the general public. It reveals a more nuanced story in which the material is organized around a single coherent theme. It also communicates the narrative the way individuals experienced reality, thereby simultaneously allowing readers to connect emotionally with activists fighting for change or with other members of the public. Narrative analysis will allow the study to connect their individual stories to each other to form a whole within the time order of events. Law professor Leon Wolff also contends that it is beneficial for telling legal stories because law relies on judicial storytelling for clarity, and for making sense of policy-driven cases. This is suitable for this research because socio-legal research focuses on how society experiences and engages with the law (Neuman 2011, Wolff 2012).

This open-ended nature of narrative analysis allows it to be flexible and combined with other research types such as content analysis (Wolff 2012). Neuman offers key features of

narrative analysis, including that it: tells a story (with a plot and subplots) presenting unfolding events from a point of view; follows a movement or process – typically a sequence of events; contains interrelations or connections within a complex, detailed context; involves individuals or groups engaging in action and making choices; has coherence in the form of a whole; and uses temporal sequencing of a chain of events such as order, pace, duration, or frequency (2011:525). Typically, the data for such analysis comes from oral sources such as interviews or written sources such as trial transcripts and newspapers. However, since there is no set procedure for analyzing and interpreting narratives it can easily be combined with other types of analysis.

### Data collection

To gather data to answer the research questions, I used three primary groups of data including: newspaper articles and other news sources from digital media and the accompanying commentary; interviews with actors in the criminal justice system; and documents such as court documents. In order to locate the relevant messaging by mass media, articles that covered the case between 2016-2017 were identified. This consisted of Malawian English language digital news sources that were online or hybrid (print and online). These news sources were selected because they reach the elite in Malawi, who are high school (or college) educated English-speaking Christians. Many of them work for government, NGOs or private companies. The framing of the case by journalists is important because the messaging reaches this elite group who are the decision makers and can influence policy (CASAM 2007, Page 2019, Perse 2000). Thereby news articles were limited to domestic sources which the elite are likely to read and included news articles, opinion pieces, or editorials or press releases about the case. They were identified using Discovery Search, a search engine of article databases provided by Virginia Tech library. A search through Google.com, an online search engine, was also conducted because not many Malawian news sources are indexed in the former. A total of 11 news sources were identified for analysis (Appendix I).

Data was also collected from the corresponding commentary sections of the identified news articles. The commentary in the sample included those from the general public published on the newspaper's own website or social media site, Facebook. These comments were identified, compiled and filtered for spam. Spam are unwanted messages posted as comments containing vague or irrelevant messages, advertising and/or containing hyperlinks of malicious

sites or advertising (Kim, Kim and Kim 2016, Sohrabi and Karimi 2018). Some articles had commentary on their website or Facebook only, others had commentary in both, and others had no commentary. A total number of 466 comments were identified for analysis, with 96 of them identified as spam, and 370 used for analysis. Comments written in Chichewa and Chitumbuka were taken to independent translators for interpretation. All news articles and their corresponding commentary were transcribed and loaded into digital analysis software MAXQDA under the label “Group 1” for analysis.

The interviews were used to create a framework for understanding the events surrounding the case and identify significant themes. They were also used to create a grand narrative frame through which the case was understood by actors involved. The interviews included six actors in the criminal justice system who were connected to the case directly or indirectly. It included activists, journalists, and members of the judiciary (Appendix II). Interviewees were identified from the court documents, news articles or using snowballing techniques. They were responding in their professional capacities. Interviews were conducted via Skype or in-person. Interviews were semi-structured, lasting 20 to 45 minutes. Audio recordings of the interviews were made using online software or a digital recording device. Handwritten notes were taken during interviews as a back-up method or when consent for audio recording was declined. During the interviews, open-ended questions typically used in narrative inquiry, such as “what were some of the main issues in this case?” were asked. Interviews were transcribed and loaded into digital analysis software MAXQDA under the label “Group 2” for analysis.

Documents related to the case were gathered that were produced from actors in the criminal justice system. This consisted of eight documents which were a combination of official court documents and records produced by the actors in the criminal justice system, including the skeleton arguments; the review order/judgment; a press release from Centre for Human Rights Education, Advice and Assistance (CHREAA) and Southern African Litigation Centre (SALC), respectively; and a case summary from CHREAA; the case’s affidavit application; and the judge’s handwritten notes from the case. These were loaded into the coding software MAXQDA and labeled “Group 3.” These were largely added as part of the triangulation of data which allows for a cross verification of sources through three different sources (Babbie 2010).

## Data analysis

The narrative content analysis used MAXQDA coding software to examine the news articles and comments, interview transcripts and documents described above. To organize the data, it was sorted into groups 1-3 based on the aforementioned type of data. Coding categories were created using both inductive and deductive methods. Deductive coding included some of the same codes from the CASAM study which analyzed newspaper coverage of sex workers in India using content analysis (CASAM 2007). This included categories such as “PresentCSWLifeViolence” which was defined as “mentions in the article about the physical abuse, violence, or murder that sex workers face in their daily lives.” Coding also used inductive methods in which meaning was derived from the text. This is because the use of open coding allows for themes to be changed based on new information received and for selective coding (Neuman 2011). The data was coded for both latent (underlying meaning) and manifest content (concrete written terms) (Babbie 2010). This was particularly useful because it allowed for flexibility while using different data sources. The data was used to respond to different research questions: to respond to question one, the study used interviews and documents from the actors in the criminal justice system; to respond to question two, the study used news articles and corresponding commentary; to respond to questions three and four, the study used newspapers and corresponding commentary, interviews and documents from actors in the criminal justice system.

A relational approach to content analysis using line-by-line technique was followed. That is, the presence of specific words, dominant narratives and themes were identified and coded to determine the relationship between concepts (Carley 1990, Pennings, Keman and Kleinnijenhuis 2005). Some of the data was coded in a way that could be quantified so that a general overview of the data could be presented. This included codes in which frequency information was useful such as “CSWLABEL” (whether they referred to sex workers “prostitute(s),” “whore(s),” “sex worker(s),” or any other name) which were useful in analyzing the framing in mass media. Relational content analysis is defined by qualitative researcher Kathleen Carley as going beyond conceptual content analysis, which focuses on counting the words and concepts in the text, by also considering the relations between them (Carley 1990). The categories were largely considered for their themes and not mutually exclusive. As an example, one comment from *Malawi News 24* reads as follows:

“No wonder it is the banks messing up the economy, medical doctors killing patients, mothers killing their own innocent babies and lawyers too deliberately misinterpreting the law to appease the rich. Today whores, prostitutes and adulterers being recognized as (sex) workers!” (Vivian)

A comment such as this was coded for word choice, economics, morality, and legal stance.

However, the general message and tone were also used to help compile the narrative of public reactions to news reports on the Pempho Banda case.

The use of narrative analysis allowed for an outline or model for organizing data and also served as a type of explanation. Since the content analysis made use of narrative analytic methods, inductive coding using codes such as “who,” “what,” “where,” “when,” “how,” and “why” were useful in building narratives and identifying major issues. Narrative analysis helped draw out themes through a thematic approach which focuses on analyzing narratives based on what is being said rather than how it is being said (Riessman 2005). This is useful for navigating a number of comments as well as different types of data to produce a common narrative.

### *Reflexivity Statement*

Although I have spent most my adult life in the United States, I self-identify as a Black, African, straight female from Malawi. My parents worked in the foreign service for Malawi, which has afforded me the opportunity to travel and live in several countries. I grew up in West Germany, South Africa, Malawi and the United States, and this experience has shaped my outlook on the world. It has influenced my decision to do my dissertation on Malawi, and also my tendency to locate Malawi in the global political economy in my research. Since I am from the Global South, the lens through which I view the world is influenced by other Global South scholars; the perspectives of dependency and post-development theorists resonate with me most. In particular, having grown up in apartheid South Africa and Malawi sparked my interests in intergroup relations, social class, and a range of other social inequalities.

My relationship to feminism started when I was young, developing out of my own interest in achieving a semblance of fairness as a quasi-tomboy, particularly, when it came to mundane activities such as the division of household chores, who genuflected to whom when greeting Malawian guests or what was acceptable clothing to wear for a Tomboy to a church that didn't allow women to wear pants. The influence of the church in perpetuating gender inequality in particular, was taxing for me. However, I also saw areas in which the church challenged

inequality in Malawi which encouraged my activism. Growing up in a household in which my older sisters were self-proclaimed feminists, my father discussed global politics with me, and having attended a progressive all-girls high school in Pretoria during apartheid, further influenced me to be focused on the quality of my education. I was interested in the narratives of the downtrodden in a world that promotes the dominant narratives of a few. This has influenced the perspectives that I use in my work. As I focused on the quality of my education, the fact that getting an education was a feat on its own did not escape me. Although seeking higher education was always expected of me in my immediate family, I am cognizant that for the average Malawian family, this is not within reach. However, between my four sisters and my brother, we each have either bachelor's or master's degrees. This, coming from a country where girls' education is undervalued and often unattainable, it made me appreciate the opportunities in higher education. It has helped me put into perspective the limited choices that girls from my country have, which often leads them to earning income through other means such as sex work.

Although I grew up in a somewhat privileged life compared to most Malawians, I believe I have some practical understanding of the position of working class. In Malawian terms of course, I would be considered a part of the elite since, like many other African nations, Malawi has no significant middle class. However, situations for elite families can be rather fickle under regime changes. Therefore, although my father continued to work as a civil servant after Kamuzu Banda stepped down, he retired from the Ministry of Justice a few years after I graduated high school on the pension of a Malawian civil servant. This meant that I had to self-fund my college education through scholarships and work. Thereby, I believe I better understand the challenges that working-class people go through, although I am still cognizant that I still had opportunities that others did not. Growing up in the diplomatic corps has also meant that I had access to individuals and institutions that many do not have in Malawi or globally. Therefore, I have learned through my experiences growing up how to navigate between different classes, including working-class and wealthier class groups. This has helped me learn to code switch and work with different types of people, which I think helps me talk to a variety of people during my research. However, ultimately, I am cognizant of the potential influence of my own upbringing as well as my position as an insider-outsider in my research in Malawi. I am an insider because I am Malawian, but I am also an outsider having spent many years outside of the country as the

daughter of a diplomat. However, it was always important to me to do work that involves Malawi.

My interest in tourism development began when I was studying for my MBA, I realized that many of the theories that we were being taught in my international business class were not compatible with the theories I had learned as a sociology undergraduate. The Africa that I knew was relegated to Geert Hofstede's cultural dimensions theory but didn't appear in many other contexts. When it did, it was in conversations about deficiencies and business risks which weren't adequately contextualized. Coincidentally, it was also a time when there was news coverage about African nations hiring public relations firms for tourism and to change their images. I knew that I needed to have the context and language to explain such phenomena and I enrolled in a Pan-African Studies master's program at Syracuse University. The program there provided me with my groundings in a critical Pan-African perspective. That program influenced my commitment to post-colonial perspectives such as dependency, post-development and Africana theories.

In order to get some background on tourism, I took a class on sex work, the global political economy and tourism in the Caribbean. It included a study abroad component in Jamaica on the same topic to observe the impact of tourism on Jamaica. This course and trip made me more cognizant of the lives sex workers lived. Although my master's thesis topic in tourism was on the phenomenon of nation-branding, when I was doing my field research, I paid closer attention to the sex workers working in the tourism industry in Malawi. There was one Malawian beach boy in particular, who when asked if he was straight or gay clarified that he was in fact not gay. However, when a member of my group pressed him about why he was seen with both male and female western tourists his response can be translated to "I don't know, why not?" This incident sparked greater interest in the comparisons between sex workers in the Caribbean and Malawi in the wake of tourism development scaling up all over the African continent. Therefore, when pursuing my PhD, this topic resurfaced as the focus of my dissertation. I knew that whilst critical post-colonial literature about sex workers in the Caribbean was available, few people were writing about the condition of sex workers in Africa – let alone Malawi. This dissertation grew out of the desire to fill that gap in literature and to support the work of the activists working towards change.

## *Chapter Outline*

### Chapter 1. Introduction

This introductory chapter presents the background of the study: statement of the problem, research objectives, research questions, theoretical framework, methodology, terminology and the outline of chapters for the dissertation. This chapter also provides a literature review that summarizes existing literature about sex work, sex tourism, criminal law and tourism development in Malawi. It situates the research in the context of other literature and studies about tourism, legalization and Malawian sex workers.

### Chapter 2. Sleepless in Dedza: Narratives of Justice in the Pempho Banda Criminal Case

This chapter provides a comprehensive account of the events and issues surrounding the Pempho Banda et al. case. It explores how these events were informed by the legal and social environment in Malawi and what this case reveals about the nature of sex work in the post-colonial context. It makes use of qualitative data from interviews, court records and related documents from actors in the criminal justice system.

### Chapter 3. Selling Sex in the Court of Public Opinion: Media Narratives and Social Attitudes

This chapter examines news articles' dominant framing of the Pempho Banda case. It also examines the narratives as expressed by the general public in the commentary that they provided both on the news sources' website and on social media. These reactions draw out the socio-cultural attitudes towards sex workers working in the tourism industry. Data was gathered from digital news media sources that covered the case as well as the corresponding commentary from readers online. The media's framing suggests that sex workers are victims of police abuse and human right violations. Narratives from the general public included topics such as the written law, legalization, criminalization, health, NGOs, politics, poverty, tourism, gender, corruption, human rights, taxation and tourism.

### Chapter 4. Torts, Tarts and Testimonies: Law, Media and Advocacy

This chapter examines the narratives from the actors in the criminal justice system to see how they compare to the dominant framing and representations in mass media including comments by the general public. Data was gathered from interviews with the actors in the criminal justice

system who played a direct or indirect role in the case. The data for comparison was gathered from digital news media as well as the corresponding commentary from the public on the news sources' digital platforms. Narratives from the advocates were largely focused on law enforcement, legal rights, and human rights. They also included topics such as gendered arrests, media support, gendered spaces in the hospitality locations, and the strategic litigation process.

#### Chapter 5. Sun, Sand, Safari and Sex Work Decriminalization: Revisiting the Law in the Era of Tourism Development

This chapter examines the narratives from actors in the criminal justice system, digital media, and the public in the case in order to discuss the possibilities for decriminalization. First, it examines the feminist perspectives on sex work and then it examines the legislative approaches to sex work with a focus on decriminalization. It further examines the implications of decriminalization for the tourism and hospitality industry in which sex workers work. The chapter locates Malawian sex workers in the context of global tourism development, sex tourism, and the international political economy. It suggests decriminalization as the preferred policy for sex worker in Malawi's tourism industry.

#### Chapter 6. Conclusion

This chapter presents the dissertation's conclusions. It includes a general overview of the chapters and findings of the dissertation, the relation of the case to previous research, limitations, problems arising during the research, practical implications and recommendations resulting from the research.

## CHAPTER 2. SLEEPLESS IN DEDZA: NARRATIVES OF JUSTICE IN THE PEMPHO BANDA CRIMINAL CASE

### *Introduction*

When nineteen women in Dedza, Malawi were arrested in a rest house by the Malawian police, they were jointly charged for engaging in sex work even though sex work is not illegal in the country. They appealed and won their case with the judge noting that hospitality locations in Malawi were not meant for men only. The Pempho Banda et al. criminal case is now regarded a key moment for Malawian sex work activism and ensuring the rights of every citizen. The purpose of this chapter is to provide a comprehensive account of the activities and events surrounding the Pempho Banda et al. case, explore how these events were informed by the legal and social environment in Malawi and examine what this case reveals about the nature of sex work in the post-colonial context. This is important because the narrative of the case was filtered by the goals of the media and general public for a variety of reasons, thereby providing insufficient analysis or contextualization about the nature of sex work in Malawi which needs further unpacking. It makes use of qualitative data from interviews, court records and related documents from actors in the criminal justice system. The data will be analyzed using narrative content analysis.

Sex workers in Malawi are a marginalized community who are often stigmatized and discriminated against, particularly in the criminal justice system. As targets of systemic police abuse, harassment and arrest, they are often convicted under Malawi's Penal Code which criminalizes "men and women who live off the earnings of prostitution" (Chizimba and Malera 2011, Government of Malawi 1930). The law itself was introduced in the country during the British colonial period but does not explicitly criminalize sex work in the country. However, based on common law using rules established in previous cases (legal precedent), it was not intended to apply to sex workers themselves. Since the law does not unequivocally criminalize sex work, their legal and social status is often in limbo. This makes it difficult for them to navigate the criminal justice system because of the ambiguity surrounding the legality of their work. In this chapter, I contend that Malawi's current social and legal environment reinforces the marginal status of sex workers in Malawi in the postcolonial context by constructing the story of the Pempho Banda case.

### *Overview of Sex Work in Malawi*

Out of a population of nearly twenty million people in the southeastern country of Malawi, an estimated 55,000 of them are sex workers. Due to lack of alternative ways to earn money as a result of extreme poverty, sex work has increasingly become a viable option for women and girls age 16-29 as a way to earn income. Many of Malawi's sex workers come from poor rural backgrounds and travel to various parts of the country in search of employment. In almost any part of Malawi, one may find sex workers working in streets, bars, night clubs, lodges, taverns, hotels, or salons. Since brothel-based sex work is illegal in Malawi, the majority of sex work takes place in the backdrop of tourism or hospitality establishment such as restaurants, bars, night clubs, bottle stores, rest houses and hotels which have bars attached. These establishments often employ "Bar girls" who are sex workers who are employed in bars, bottle stores or rest houses to serve drinks, but also exchange sex with male customers. The owners typically pay them minimum wage but often provide them discounts when they live or rent rooms in their establishment, which facilitates sexual transactions to take place 'behind the bar'. This type of arrangement is more common for sex workers in Malawi than sex work in which sex workers walk the streets in search for customers. As such, many tourism and hospitality locations are considered male spaces (Baird and Ozler 2016, Chizimba and Malera 2011, Kishindo 1995, Van den Borne 2005).

Although sex work occurs in all parts of the country, the majority of sex work in Malawi takes place in urban areas, border districts, tourist destinations (typically along the lakeshore), transit districts and fishing/plantation areas. Sex workers tend to patronize places where they have access to clients with money, such as locations with access to cross-border traders, haulers, and tourists, as well as local travelers. However, with advances in technology, more sex workers are starting to look for clients using the internet and social media as well. Their clients include drivers, farmers, religious leaders, young people, owners of entertainment places, DJs, and Asian (India and the subcontinent) and Chinese clients. Demand for sex work in Malawi varies across profession, occupation, age and marital status, and ethnicity. The services they provide them also range, including anal, oral, vaginal, masturbation, breast and thigh sex (Chizimba and Malera 2011, Kishindo 1995). They typically charge between US\$0.25 to US\$4 but may charge up to US\$35 for their services depending on the circumstance. Therefore, they do not earn enough

money to get themselves out of poverty albeit, improving their economic conditions being the primary reason most of them enter the trade (Kishindo 1995, WikiSexGuide 2019).

Sex workers in Malawi face stigma and discrimination from members of their own family, healthcare workers, churches, clients, and the wider society. Pejoratively labelled as “uhule,” they are collectively stigmatized as being poor, homeless, and immoral and regarded as being responsible for the malaise in society such as the spread of HIV/AIDS. As such, they face social marginalization and are often excluded from participating in community events such as funerals or weddings. They are also excluded from accessing services that will improve their situation such as small credit loans and healthcare. This type of stigmatization has left them vulnerable to physical and emotional abuse by their clients and members of the wider society such as thugs, street children, bar attendants, bouncers, DJs and owners of entertainment places. They often don’t report abuse to the police because they are afraid of being targeted by law enforcement who are also perpetrators of abuse. The police are known to harass, rape, abuse, or steal personal items such as cellphones from them. They are also known to arbitrarily arrest them, often asking for money in order to avoid arrest even though sex work is not illegal (Chizimba and Malera 2011, Mbewe 2015).

Their stigmatization, experience of discrimination, and low socio-economic status is linked to the complex legal environment which is characterized by the criminalization of activities surrounding sex work (Chizimba and Malera 2011, Kerrigan et al. 2015, Mbewe 2015). Contrary to popular belief, sex work itself is not explicitly illegal in Malawi. The country follows a policy of partial criminalization. Section 146 creates the offense of a woman who “knowingly lives wholly or in part on the earnings of prostitution,” persistently solicits prostitution or influences others to engage in prostitution (Government of Malawi 1930). Section 145 does the same for a man living on the earnings of sex work. Since the law doesn’t unequivocally criminalize sex work, using common law, the law has been interpreted as not referring to sex workers themselves. This interpretation is backed by previous rulings stemming back to the British colonial laws which Malawi’s Penal Code was based on (SALC 2017). According to historical precedent, it was meant to target those who exploit sex workers by living off the earnings of their work such as pimps, kidnappers, or others who may profit off them. A related law, in section 147 of Malawi’s Penal Code, criminalizes brothel madams or pimps from operating brothels in a room, set of rooms, house or any place intended for sex work

(Government of Malawi 1930). However, legally the act of selling sex and buying sex is not a crime. Since the law has been subjected to interpretation and since some of the activity surrounding sex work was also criminalized, the law still leaves sex workers susceptible to abuse because they operate in a criminalized environment. They are often arrested by the police under the guise of this law and treated like criminals when they have, in fact, committed no crime. Therefore, the narrative of the Pempho Banda et al. case, which challenged the way sex workers are treated within the criminal justice system, provided a space for clarity surrounding the legal status of sex workers and other broader socio-legal issues to manifest.

When the nineteen women in Dedza were arrested in hospitality locations by the Malawian police in 2016, they were jointly charged for engaging in sex work. The women were convicted and fined for the offense of “living on the earnings of prostitution” despite lack of evidence and in spite of sex work not being illegal in the country. In what they felt constituted a miscarriage of justice, the sex workers sought legal recourse. They enlisted the assistance of non-profit organizations who helped them navigate a criminal justice system that is often biased against marginalized groups. They successfully appealed and won their case through Malawi’s High court in Zomba in what civil society organizations across the country heralded as a victory for human rights (SALC 2017). The case captured the public’s imagination, propelling sex workers and issues of sex work into mainstream public discourse in a country where not many issues involving their rights are discussed, aside from those dealing with healthcare or the spread of disease. Many Malawian newspapers covered the story, providing some background information about the case. However, because newspaper journalists often aim to just present the facts of the case with limited space, are limited by editorial decisions, or may otherwise not be able to provide in-depth coverage for other reasons, the news coverage is too sparse to adequately unpack the social or legal context in which the case occurred. They were not able to provide much detail about the activities and events surrounding the case, the social cultural context, colonial origins of the law, nor the activism that took place in the background in order to secure their victory. The purpose of this chapter is to provide a comprehensive account of the activities and events surrounding the Pempho Banda et al. case from the narratives of the activists who helped secure their victory. It explores how these events were informed by the legal and social environment in Malawi and what this case reveals about the nature of sex work

in the post-colonial context. As such, the chapter will respond to Research Question 1, the first of four research questions I introduced in Chapter 1:

*What is the story of the Pempho Banda et al. sex worker legal case, and how were the events in the case informed by Malawi's legal and social environment? And what does this reveal about the nature of sex work in a postcolonial context?*

### *Methodology*

In order to respond to the question, the study makes use of qualitative research methods based on critical social science (CSS) and feminist approaches. As a CSS approach, it aims to critique and transform society by revealing power relations and inequality and by seeking to “empower” marginalized groups in society and improve their lives (Neuman 2011). It incorporates feminist methodology in that it is sensitive to gender in power relations and advocates for social change. The primary mode of investigation is narrative content analysis. This allows the study to draw on the narratives from human communication such as court records or newspapers which are systematically recorded and analyzed (Babbie 2010). It combines this with narrative tradition in order to draw out the story of the case and the narratives of people involved in the case to reveal a grand narrative (Neuman 2011).

Data for the study was gathered using triangulation which allows for a cross verification of sources through three different sources. First, this included official court documents, including skeleton arguments submitted to the court and a review order/ case judgment. Handwritten notes from the presiding Judge during the High Court case were obtained from the court. Two press releases from the advocates were found online. Second, six in depth interviews were conducted with people connected to the case who could highlight the narrative, context and key arguments (Appendix II). This included criminal justice system actors and people that work with the criminal justice system such as journalists who were identified by looking at the court records and newspaper articles and then by contacting them directly or by using snowballing techniques. They were all interviewed in their professional capacity as representatives of their organizations and identified by name. All interviews were conducted via Skype except for one that was done in-person; the interviews lasted twenty minutes to 1 hour. All except for one interview were audio recorded using the online software or an audio recorder. The interviews were transcribed, and the content was analyzed to build a narrative and for themes. The

information was coded into the broader categories “who,” “what,” “where,” “when,” “why,” and “how” to draw out a chronological narrative of the case and any other issues surrounding the events. The “why” category also coded for other common themes in the documents linked to the narrative such as “gender,” “human rights,” “development,” and “tourism.” Lastly, it was coded to draw out any narratives about issue about sex work or sex workers in general that were discussed that give insight to the social, cultural, legal and political conditions such as “socio-economic issues,” “health,” “trafficking,” “stigma,” “morality,” and “religion.” The categories selected here were based on the issues identified in a study by the Center for Advocacy on Stigma and Marginalization (CASAM) in India that examined the representation of sex workers and presentation of issues related to sex work and sex workers as reported in that country’s media (CASAM 2007:3).

### *Background of the Case*

The arrest of sex workers in the Pempho Banda case took place in Dedza, the main township of Dedza District. Located in the Central Region of Malawi, Dedza District is a mountainous region has an estimated population of 900,000. Lying halfway between the nation’s capital, Lilongwe, and the commercial capital, Blantyre, it is the third largest District in the region. Dedza is a semi-urban district with small and medium businesses and a growing informal sector. The dominant ethnic groups that live there include the Ngoni, Yao and Chewa although one can also find people of Sena, Tonga and Tumbuka descent. There are also many Mozambican nationals living throughout the district since it shares an international border with Mozambique. Dedza has also seen an increase in foreign nationals from China, Burundi, Rwanda, and India operating shops in the urban and peri-urban areas of the district. About twenty-three local and international NGOs also operate in the area. As a lakeshore District which also has other attractions, it is also host to a number of tourists. Due to the bustling activity in the District and potential for clients, a high number of sex workers are attracted to the District (Chizimba and Malera 2011, Government of Malawi 2014, McNeish 2016).

The local government of Dedza is administered by a District Council that has the authority to enact by-laws and get resources. It includes eight Traditional Authorities (Chiefs) who have the power to change customary law and raise resources for running the affairs of the district (Government of Malawi 2014). Notably, this includes Paramount Chief Theresa Kachindamoto who attracted national and international attention in 2016 by ending sexual

initiation rites involving young girls in Dedza. She also spearheaded the annulment of 850 child brides by getting her fifty sub-chiefs to agree to change the customary law under her authority in Dedza to make child marriages a crime (McNeish 2016). This helped project an image of Dedza as a place where gender rights were being championed under the law. In sharp contrast, that same year, less attention was being paid to the rights of woman sex workers in Dedza who were also trying to obtain justice by navigating the criminal justice system.

Malawi has a mixed legal system making use of both customary law and common law which it inherited from British colonialism. The justice system includes government branches such as the Police Service, the Ministry of Home Affairs and Internal Security, the Ministry of Justice and Constitutional Affairs, Malawi Human Rights Commission, the Office of the Ombudsman, and the judiciary. It also includes NGOs, civil society organizations and private lawyers that work with issues of justice. The Judiciary of Malawi is the branch charged with interpreting and applying the laws to resolve disputes or ensure rights and justice. The Supreme Court and High Court, who are the courts of record, are the only courts with jurisdiction to interpret constitutional rights and handle all appeals. The Supreme Court of Appeals is the highest court in Malawi followed by the High Court, Subordinate Courts and then Magistrate Courts (Local courts). Magistrate courts are further divided into Resident Magistrates (who are legal professionals with a law degree) and First, Second, Third and Fourth Grade Magistrates. The latter four grades are collectively known lay Magistrates and typically have a diploma in law. Others do not have diplomas because Z era which did not require them (Kanyongolo 2006, Malawi Judiciary 2019, Ntaba 2016, Ubink and Mnisi Weeks 2017). Since they were intended to handle customary law, they located in every city and district and handle both civil and criminal cases. However, the powers of each court vary according to grade. Generally, the magistrate courts handle the bulk of the cases since the country has approximately 183 lay magistrates and 41 professional ones. This number is inadequate for the number of cases they receive, thereby impeding their work. Other obstacles to their activities include limited physical court infrastructure, financial resources, and access to the courts because of the physical distance of the courts from rural populations (Kanyongolo 2006, Ntaba 2016). This makes access to justice for many of the poor, including sex workers, challenging.

Access to legal justice is difficult for the marginalized poor in Malawi who face significant obstacles in accessing the formal justice system, particularly for vulnerable groups

such as sex workers who are often in danger of having their rights violated in the criminal justice system. In recent years, they have made some significant gains by challenging their marginal legal status and through organizing. A few high-profile cases that received national and international attention have helped bring their voices to the foreground. Malawian sex workers were arrested during police raids in Mwanza in 2009 and forced to undergo HIV tests by the government without their consent (Moshenberg 2015). They were charged with the crime of spreading disease “dangerous to life” which is an offense under the Penal Code (Chizimba and Malera 2011). Their medical conditions, including HIV status, were disclosed during the open court hearing - this is how some of them found out about their HIV status. The “Mwanza 11” challenged the ruling in the Blantyre High Court with the assistance from human rights attorney Chrispine Sibande, SALC, and the Open Society Initiative for Southern Africa (OSISA). They won their case in 2015, when Justice Dorothy nyaKaunda Kamanga declared forced HIV testing as a violation of their constitutional rights to privacy, dignity, and non-discrimination. This case was regarded as a victory for sex workers in Malawi in that it showed that vulnerable groups in Malawi could also hold the government accountable and that justice was not only meant for the rich (Moshenberg 2015, SALC 2017).

In March of the same year, a street vender (hawker), Mayeso Gwanda, was arrested at 4:00AM on his way to sell plastic bags in Blantyre under the offense of being Rogue and Vagabond. Popularly known as *vakabu*, these laws make it an offense to be in a public location at a time that leads to the conclusion that they are there for an illegal, improper or disorderly reason. These laws were often used by the police to target sex workers, vendors and other marginalized groups. According to Chikondi Chijozi, whose organization CHREAA lent its expertise as *amicus curiae* (friend of the court), notes that “[t]he findings of [our] research revealed that over eighty percent of sex workers are abused by the police when they arrested under these offenses” (Chikondi Chijozi, personal interview, October 10, 2018). Mayeso Gwanda appealed his case to the constitutional court which was heard by Justices Michael Mtambo, Zione Ntaba and Sylvester Kalembera. The case was still being deliberated in 2016 when the Pempho Banda case commenced, which was important because the treatment of sex workers under the criminal justice system came to the foreground. The final judgment in *Mayeso Gwanda vs The State* was handed down in January 2017 when the law was considered unconstitutional and in violation of his right to privacy, freedom of movement, dignity and

freedom from cruel, inhumane, and degrading treatment (*The Republic v. Mayeso Gwanda* 2017, Kamiyala 2017, SALC 2017).

Malawian sex workers have begun to demand their rights in recent years. They have begun to organize to take collective action which has helped them become more visible and gain rights. They have been forming formal associations for their advocacy work and also make use of social media sites such as Facebook to connect. The most prominent such group is the Female Sex Workers Association (FSWA) which formed in 2012 as Malawi Sex Workers Alliance (MASWA) (2012). According to their Central Region Coordinator, who identified herself as Memory, MASWA had to change their name a few years later because they couldn't register as a Malawian association of sex workers due to the legal status of sex work (Memory, personal interview, December 6, 2018). As an advocacy association, FSWA focuses on opposing the criminalization of sex work and other legal oppression, "we need to have a society in which all female sex workers are able to enjoy their fundamental rights and they're free from discrimination" (Memory). They thereby advocate for the removal of legal barriers, which includes defending sex workers arrested under "archaic laws" (NSWP 2017). They were particularly active during the Mayeso Gwanda case: "we were there at the court, and they looked at us and said 'oh, sex workers are also here, I think then also they are being touched because of this case, so include them for this'. Otherwise, had we not been there, they would not have mentioned us. But because we took part, that's why they were including female sex workers for that case" (Memory). In addition, FSWA advocate for universal access to healthcare, an end to violence against sex workers, economic empowerment and social inclusion of sex workers as workers who face stigma and discrimination (NSWP 2017). They also affirm the position of liberal feminists and pro-sex work advocates by calling for their profession to be recognized as work: "we are people, we have rights, we are born with our rights ...we are like anyone else...people who are going out for business, people who are going out for work...we are like those people.... so why do [they] arrest us when we are at our work?" (Memory interview). FSWA works with other sex worker associations through transnational connections who face similar experiences. Since their formation, other sex worker associations have formed throughout the country. Although gains had been made, by 2016 sex workers in Malawi still faced challenges due to the legal and social status of sex work.

### *The Story of the Pempho Banda Case*

In the early morning hours on February 24<sup>th</sup>, 2016, nineteen women were arrested during a police raid at a locally owned rest house in Dedza township. According to their legal practitioner Fostino Maele, it was during a routine raid: “[T]his was just, what they call a, sweeping exercise here in Malawi, whereby the police will just go to a certain area and arrest people randomly. . . So, they raided this rest house, and just arrested all the women that were there!” (Fostino Maele, personal interview, November 15, 2018). They did not arrest any of the men found there. All of the arrested were Malawian women from different parts of the country, over the age of 18, who had gone to the hotel independently for different purposes. Some were proceeding out of town the next day, and another had come with her husband who had stepped out of the room at the time of the raid (Maele interview, Chizjozi interview). Others were indeed sex workers but were not with clients at the time of the arrest: “[Of] course, some of the women that were arrested were actually doing sex work, they had come from different districts, they were staying there for sex work, but at the actual time that they were arrested, they were doing other things. There [was] nothing that they were doing that was related to sex work” (Maele interview). “It wasn’t like they were working, or doing their trade in the street, or in brothels or in the bars... It was when they were sleeping in their rooms, they came and arrested them” (Chizjozi interview). The women were all arrested for sex work under the offense of living on the earnings of prostitution. They were all jointly brought before Magistrate Kalako in the Fourth Grade Magistrate court on February 25<sup>th</sup>, 2016 (*The Republic v. Pempho Banda and 18 Others* 2016). Albeit the police did not have any evidence to prove that they had committed the offense, none of them had any legal representation and jointly pleaded guilty. They were convicted for the offense of living on the earnings of prostitution and were fined MK7,000 or the equivalent of US\$6 in court fees (SALC 2017).

The women got in contact with FSWA and CHREAA for assistance. After CHREAA and SALC conducted research (published as *No Justice for the Poor: A Preliminary Study of the Law and Practice Relating to Arrests for Nuisance-Related Offences in Blantyre, Malawi*) about the impact of vagrancy offenses such as the Rogue and Vagabond or Idle and Disorderly laws on vulnerable groups in Malawi, they wanted to address the problem (Banda and Meerkotter 2015). According to CHREAA litigation lawyer Chijozi, in 2013 they started a project called Protecting Sex Workers from Police Abuse, which assists sex workers with access to justice such as

informing them about their legal rights, what do in case of arrest, how to report abuse, how to get access to paralegals, and the operation of a toll-free hotline that advises on human rights and sex worker rights. They became aware of this case through this project: “we got a phone call from the help-line from the sex workers informing us that nineteen sex workers had been arrested by the police and they were charged with the offense of living on the earnings of prostitution” (Chizjozi interview). CHREAA then engaged SALC to assist with technical support and finance. SALC is a South African based organization that provides legal support for activists and grassroots organizations in Southern Africa that litigate human rights and other legal issues. According to litigation lawyer Tashwill Esterhuizen, SALC work with CHREAA on a number of cases to secure rights for vulnerable populations, including sex workers (Tashwill Esterhuizen, personal interview, December 19, 2018). Together they hired Blantyre based lawyer Maele to work on the case and jointly work out a strategy for litigating the case: “regardless of who you are, rights should be applied to you. Whether you’re criminalized or not doesn’t prevent you from your other rights” (Esterhuizen interview). They also mobilized other civil society organizations to challenge the validity of the charge in court.

Chijozi went with Director of CHREAA Victor Mhango to meet with the sex workers in Dedza: “when we got the phone call it was myself who went to meet the sex workers in the central region to get instructions on behalf of Fostino. We explained to them why we felt they should bring their case to the court, and we had to get consent from them. So, I went there with Victor, then after we got consent, we prepared the documents with Fostino and Southern African Litigation Center...” (Chizjozi interview). They also paid fines for the sex workers that were arrested who could not afford to get out of jail. Once they received consent, they drafted the skeleton arguments to send to the court of appeals. The skeleton arguments submitted by Maele presented six primary grounds for review. First, they argued that the Fourth Grade Magistrate court had no jurisdiction to hear the case. As a magistrate court, they can hear cases with a maximum sentence of 12 months and/or where the fine is under MK100,000, but this offence has a maximum sentence of 24 months. Second, they argued that “The particulars of the charge were bad for misjoinder” (Maele 2016). This means that all the women were charged together on one charge sheet instead of separately, giving the impression that they committed the alleged offenses jointly instead of separately. Third, they argued that the pleas were wrong because the court obtained a single unanimous plea. The court was supposed to obtain separate replies from

each of the women. Fourth, they argued that the details of charge did not capture the elements of the offense. At the time of the arrest, the sex workers were not engaging in the conduct that they were charged for, therefore there was no evidence that they were living on the earnings of sex work. Fifth, they argued that the charge itself was wrong because the living on the earnings of prostitution law does not target the sex workers themselves. They traced the origins and interpretation of the law to an amendment to the Vagrancy Act in English Parliament in 1898. The section of the law targeted those deemed rogue, vagabond and/or living parasitically and exploitatively off the earnings of sex workers. Finally, they argued that the magistrate did not comply with section 251 of the Criminal Procedure and Evidence Code which requires that the accused understands the charges and their consequences before they accept their guilty pleas (*The Republic v. Pempho Banda and 18 Others* 2016, Maele 2016, SALC 2017).

When they received the court dates, Chijozi went to brief the sex workers about the pending case and notified other civil societies with interest in the case. This included organizations such as Centre for Human Rights and Rehabilitation (CHRR), Badilika Foundation, Article 3 Group Youth and Society, Lawyers Forum for Human Rights and AIDS and Rights Alliance for Southern Africa (ARASA). They mobilized sex workers from different districts to attend the case: “[we] wanted to have as many sex workers as possible, to come to the court in solidarity of the 19 that were arrested, so we had a huge number of sex workers on the day of the hearing” (Chijozi interview). On the day of the court, CHREAA and SALC arranged transportation for sex workers that were available to attend the court - not all the sex workers were able to make the case because as a transient group, some had left Dedza. Chijozi, Mhango, and Esterhuizen went to Zomba, the judicial capital of Malawi, to plead the case in High Court. Representatives from FSWA were also in attendance wearing t-shirts expressing solidarity with the accused that read, “We demand our rights, we are also people like anybody else” (Memory). According to Memory, it was important for them to show their support, “[S]ex workers, they know each other. So, we said, ‘you know, hey there is this that has happened to Pempho, so what should we do? Let’s go and support her!’” (Memory). The case was argued on July 28, 2016 before Justice Zion Ntoba. The sex workers were represented by Maele, who reiterated the skeleton arguments on behalf of the sex workers: “Normally it’s the lawyers representing the parties that will speak during the review. Unless the court actually requires [them to speak]” (Maele interview). They then waited for the judgment which was to be delivered on a different day.

Less than two months later, they returned to Zomba on September 8<sup>th</sup>, 2016 for the judgment. Once again, CHREAA, SALC, other civil society organizations and sex workers attended, “[T]hey also came in large numbers” (Chizjozi interview). Sex workers once again put on t-shirts expressing solidarity and held placards reading, “Respect all persons’ human rights and human dignity” (SALC 2016). Members of the press were also in attendance. The judgment was read by Justice Ntaba in open court who ruled in favor of the sex workers. She emphasized the noticeable procedural irregularities such as the joint charges and the unanimous plea, as well as the lack of jurisdiction of the lower court. Noting that renting a room in a rest house or even having sex in one did not constitute an offense, she highlighted that the lack of evidence listed on the charge sheet meant that their arrests were carried out to “embarrass, label and harass” them (*The Republic v. Pempho Banda and 18 Others* 2016). In spite the lack of evidence, she agreed that the law was meant to protect sex workers from those wanting to exploit them, considering the history of Section 146 of the Penal Code. Ntaba noted that since the law is vague, sex workers will continue to face discrimination and their rights to liberty continue to be violated as it had in this case (*The Republic v. Pempho Banda and 18 Others* 2016, CHREAA 2016). She emphasized the need to have more open dialogue about the social and legal status of sex workers:

I am not here to advocate for criminalization or decriminalization of commercial sex work or prostitution but only to highlight that prostitution related offences in Malawi shall remain an area of blatant discrimination, unfairness, inequality, abuse as well as bias from law enforcement as well as the courts as evidenced in this case. I seriously believe, Malawi does need to have a frank discussion on the same or our courts will be plagued in dealing with such cases. (*The Republic v. Pempho Banda and 18 Others* 2016:19)

Justice Ntaba ordered the convictions overturned and the fines to be returned. However as of 2017, the sex workers reported that they had not received their refunds yet. The High Court in Zomba noted that typically the timing in case of refunds depends on having all the relevant documents needed to return the money (Kashoti 2017).

After the judgment, SALC and CHREAA continued to work on the case as part of the post litigation activities. Maele notes that they had to continue working on the case so that the news of the judgment would reach all stakeholders due to the constraints in Malawi’s judicial infrastructure: “I am here in Blantyre, and the police in the town will comply with the order, but if you go to the districts in the outskirts there, there is no compliance with the order that is made in the judgment. So, in a way, we can’t say that there is full protection of the sex workers at all” (Maele interview). He adds that he had gone to Lizulu, a town near Dedza, after the case and

found sex workers still being arrested. They were only released after he intervened by informing the police station of the ruling in the case. According to Malawian law professor Edge Kanyongolo, often magistrate courts in the rural area do not have current copies of the law, if any at all, due to associated costs. Otherwise, court orders in Malawi are generally respected by people and institutions other than government. Flouting court orders by the general public and institutions is still the exception rather than the rule (Kanyongolo 2006). Subsequently, part of the work of the advocacy groups after the case included sensitizing the public about the judgment “[We] spent money to train police, sex workers, we created pamphlets, did some work on TV, we did pamphlets in Chichewa ... with CHREAA displaying the judgment” (Esterhuizen interview). They also met with officials to let them know about the case, “I went to a meeting with the police commissioner in Lilongwe . . . we met with the prosecuting authorities and put information up on our website. This is all a part of our follow-up. Even though we had limited resources, we try to do what we can with those resources” (Esterhuizen interview).

Memory also noted that as a result of this case, FSWA now has a chapter in Dedza with a Chair to work on rights violations. They introduced themselves to the District Commissioner, who welcomed them and assured them that the government offices had formed a committee of their own to work with sex workers as well as assist them in cases where their rights are violated. Memory did highlight that although they made inroads in Dedza the arbitrary arrest of sex workers in the country has not stopped (Memory). Chijozi concurs: “[S]ex workers are still reporting being beaten, being raped, and that” (Chijozi). Although the ruling did reduce the number of cases based on living on the earnings of prostitution, there are still other offenses related to the vagrancy laws that police continued to use to target after this case, such as laws against criminal trespassing or being Idle and Disorderly or Rogue and Vagabond (Chizozi interview, Maele interview). Chizozi adds “Now we get fewer and fewer reports of abuse.... And the sex workers are even more empowered because they are able to challenge their arrest, and the police actually know that now these people know that cannot just be tossed around” (Chizozi interview).

### *Central Themes and Issues*

Although the arrests of sex workers have not stopped completely, the case is regarded as a victory for sex workers by advocates for several reasons. First and foremost, the

primary legal issue in the case for actors in the criminal justice system was affirming the interpretation of the law that made living on the earnings of sex work an offense. This is because the perception that sex work is illegal facilitates the continual discrimination against and marginalization of sex workers. In particular, the treatment of sex workers by the police indicated the need for more training on the legal status of sex workers. The case was decisive in ruling that sex work was not inherently illegal and that the law was meant to protect sex workers. They did so by considering the origins of the case and legal precedent. The laws have their origins in the British Vagrancy Act which was applied to all the colonies. It was intended to apply to people considered rogue and vagabond who lived off the earnings of sex workers but was later extended to include Section 146 because there were “sensationalist and unsubstantiated allegations of white women being trafficked to colonies for the purpose of prostitution” (*The Republic v. Pempho Banda and 18 Others* 2016:4). Therefore, the issues of archaic colonial laws that do not benefit the country arose, as well as their relevancy in contemporary Malawi, were highlighted as a result of this case. The decision will also affect many other countries across the former British Empire who use common law and have the same law in their penal codes. “This is a precedent for all other cases as well. Not only in Malawi, but throughout southern Africa . . . because we can duplicate the argument for the rest of Africa. These are all colonial laws and so they are duplicated in other countries” (Esterhuizen interview). The decision will therefore be used to clarify the status of sex workers throughout former British colonies in Africa whose status is also ambiguous. The vagueness of the law essentially means that it can be applied to a wide spectrum of people:

It’s very vague and it's very big and ambiguous - it can catch anyone - the fact that if I have a mother who is a sex worker for instance, and she pays for my school fees from money that she's made from sex work, basically means that I can be arrested for having lived off the earnings of prostitution. (Justice Ntaba, personal interview, November 13, 2018)

The judge and advocates in the case all called for greater clarity in the law, suggesting that it needed to be revised. Therefore, the ruling helped to clarify the status of sex workers so that the appropriate interpretation and use of this particular Penal Code offense was more consistent and respected the rights of all (SALC 2017). The advocates from FSWA and SALC noted that, since there were other laws that targeted sex workers, in order for sex workers to fully recognize their rights those laws would need to be addressed as well. They added that taking care of this law alone would not prevent them from being targeted, since the vagrancy laws dealt with more than

just the living on the earnings provision. The activists highlighted support for decriminalizing aspects of the laws that criminalized sex work, particularly in situations where it violated constitutional rights.

The observance of the rights of sex workers, once arrested by police, was another key issue. Esterhuizen notes that one of the primary issues of the case were procedural issues relating to how sex workers are treated after being deemed criminal. During the case, the sex workers were jointly arrested and charged. The charges were also not explained to them properly or individually. The court took a unanimous plea instead: “there's no way you can have a unanimous plea before nineteen people!” (Ntaba interview). This is procedurally illegal as was conviction without evidence linking the sex workers to a crime. The case highlights how sex workers are vulnerable to arrest even when there is no evidence that they engaged in illegal activity, “You can’t arrest the sex workers willy-nilly. There is a distinction between a crime and an individual - a sex worker. They can’t arrest [you] for being a sex worker - it is not a crime - an offense needs to be made” (Esterhuizen interview). In effect, this meant that sex workers in the country are being arrested simply for being sex workers. Through this case, the court affirmed that sex workers have rights and can’t be arrested without evidence of committing a crime but are entitled to due process whether they have in fact committed the alleged crime or not. This was a groundbreaking assertion. “[T]his was the first court in the southern African region where the court had affirmed this. It shows that just because they are deemed to be sex workers doesn’t deprive them of all their other rights” (Esterhuizen interview). In addition to recognizing the right to due process, the court affirmed other rights that are extended to sex workers such as human rights. Human rights are enshrined in the country’s laws because the Universal Declaration of Human Rights is part of Malawian law (Gloppen and Kanyongolo 2007). Justice Ntaba stated that since Malawi decided to be governed by a constitution, the country needs to prioritize it. She asserts that the principals of human rights informed her ruling as well as the other rights awarded through the Bill of Rights (Ntaba interview). The Bill of Rights in Malawi enshrines other rights such the right to pursue a livelihood, and to a fair labor practice and the right to development. (The right to development in Malawi refers to individual development as well as collective development) (Gloppen and Kanyongolo 2007:265). Not allowing sex workers to practice their trade hinders their right to progress economically and socially as individuals.

Therefore, advocates note that this case was instrumental in recognizing and publicizing how vulnerable they are as a population.

The case highlights how the criminal justice system ignores the rights of accused people, particularly when they are a member of marginalized groups such as the poor (SALC 2017). Although the case does not directly litigate the role of class in access to justice, issues about economic status affect individuals in the criminal justice system. In this case, their economic class made them easy targets for the initial arrest. Sex work occurs in tourist resorts in the lake areas and high-end hotels, but those businesses are rarely raided, leaving the poor vulnerable to arrest. “In a related case, there was a hawker or beggar who was walking from one point to one point and he was arrested. He wasn’t doing anything. He was just walking. These laws are outdated, and they are used to target the poor. This is the same with sex workers” (Esterhuizen interview). Their economic status also prevented them from obtaining lawyers to defend them in the lower court or paying the fines. A fine of MK7,000 (US\$6) is unaffordable for the rural poor who live on about US\$1 a day. Therefore, this case highlights that interventions by advocates are necessary to ensure that the rights of the poor marginalized women are respected because economic status is a barrier to access to justice. Often marginalized groups like sex workers cannot afford lawyers, or the costs associated with appealing their grievances in cases where their rights are violated (Gloppen and Kanyongolo 2007).

Even though Malawi’s bill of rights supports socio-economic rights, landmark judgments to directly recognize the socio-economic rights of the poor, women and other marginalized groups are still a rare occurrence in Malawi because litigants need to have a direct interest in the case (Gloppen and Kanyongolo 2007). Therefore, issues of gender manifested because the individuals arrested during the raid were all women, but they did not sue for gender discrimination. “Even though gender may have been an issue, we didn’t make a gender argument, we made one based on due process” (Esterhuizen interview). As a vulnerable group, the intersection of being poor, female sex workers made them more susceptible to discrimination and arrest in the criminal justice system. During the raid, women were arrested but men were left alone:

[W]hile these police officers were arresting these ladies, there were some other guys in this rest house that were just left. I would say the police were arresting them because they were women and they were found in a rest house... So, I think it’s a perception issue. (Maele interview)

The police in Malawi simply assumed that because they were women alone in a rest house it meant that they were there for the legally defined immoral purposes of sex work. “These police just think just because you’re a woman and you’re in a rest house, you’re there for these purposes when in fact some of them were there for a completely different purpose” (Maele interview). Justice Ntaba noted that, similar to a precedent case, arresting a woman alone without her male counterpart constituted discrimination. “It is a gender issue because . . . it presupposes that the woman is the one committing a crime, but in terms of sex work there has to be the supplier and the person demanding that supply” (Ntaba interview). She notes that, “if it’s an offence, it has to be both because the issue is the biggest offense that happens is the solicitation” (Ntaba interview). She adds that solicitation is a crime in Malawi as well, yet “somehow, it’s only ‘living on the earnings’ that the woman gets arrested [for], but the man who is soliciting the sex work, doesn’t, so it’s a very . . . it’s gender discrimination to be honest” (Ntaba interview). Justice Ntaba also notes that the designation of rest houses as male spaces is problematic and that women have a right to be in hospitality locations. In her ruling she mentions that the issue of gendered spaces has been addressed in prior cases but that it is a recurring problem in the hospitality sector. “Rest houses, motels, inns, and indeed hotels are not exclusively for men to stay in or spend overnights” (*The Republic v. Pempho Banda and 18 Others* 2016:18). This perception stigmatizes women who are not sex workers who go to hospitality locations, and it also alienates women who are sex workers from those spaces.

In fact, the importance of women and sex workers to businesses in the hospitality industry was further emphasized by the owner who lamented that not only were the women treated unfairly, but they were his customers as well and such raids were impacting his business negatively (Chizjozi interview). Whilst issues focusing on gender injustices are covered in Malawi’s constitution at several levels, gender and class discrimination still occur. In order to understand the ongoing injustices to poor female sex workers and their treatment in the criminal justice system, it helps to understand the social and legal environment that informed this case.

#### *How Events in the Case were Informed by Malawi’s Legal and Social Environment*

We need to understand the central role of sex in traditional and contemporary cultures in Malawi in order to understand the socio-cultural context of the case. Malawi is generally a conservative and male-dominated society. Many Malawian ethnic groups encourage indirect communication about sex to the extent that it is even taboo for a woman to discuss sex or sexual

organs openly to her spouse – it would be considered ill-mannered or promiscuous (Moto 2004). Additionally, many initiation ceremonies involving sex are also secretive and not openly discussed. However, some cultures in Malawi are explicit and direct about sexual intercourse. However, even in cases where they are more direct about sex, it is the convention in Malawi to use euphemisms and cryptic language when talking about sex and sexual organs (Moto 2004). Therefore, sex workers, who openly defy this convention by being open about sex are shunned even in traditional societies where references to sexual intercourse are more explicit and are socially sanctioned.

It is not uncommon to find village names (i.e. *Kwataine* village in Ntcheu) and family surnames (i.e. *Kachindamoto*, *Nyekanyeka*) crudely connotating sexual intercourse. Even primary school names such as *Chokolo* Primary School, makes references to a cultural practice that may involve sex. In cultural practice of *chiharo*, a deceased man's relative (usually brother) inherits his wife who is known as a *chokolo* (wife inheritance) as a source of financial support and he may or may not sleep with her (Page 2019:75). During sexual initiation ceremonies at sexual initiation camps, the girls are taught how to please men sexually. They are also taught how to do this through sensual dances and even dancing at rural weddings may have sexual connotations. In a tradition known as *magolowazi*, members of the bride and groom's family dance together and typically engage in sanctioned sexual activity (MHRC 2006, McNeish 2016). According to veteran Malawian journalist Agnes Mizere who reports about sex and sexuality in Malawi, “[y]ou have seen in the villages how they dance some of their dances – they are very sexual and then there are some cultures where they say a woman cannot say no to a man” (Agnes Mizere, personal interview, September 20, 2018).

Women are socialized to be meek and silent about sex to the point of not being able to refuse sexual advances. Although Malawian cultures consist of both patrilineal and matrilineal ethnic groups, it is largely a patriarchal society that encourages women to know how to please a man as the ultimate goal of sex. Men, on the other hand, are encouraged to be dominant and in control, particularly in sexual liaisons (Page 2019, Ribhon 2002). This gender based sexual hierarchy is facilitated by cultural practices such as *gwamula* and *kusungu mwana*. *Gwamula* is practice whereby it is socially acceptable for young men to break into a girl's place of residence at night and have sex with them without prior arrangement. *Kusungu mwana* is when a wife leaves home for a long time, and elders choose a girl – typically the wife's younger sister- to

have sex with the man during her absence. In some cultural practices such as *chimwanamaye* where husbands who are close friends swap wives, women do have a choice whether to engage in the sexual relationship (MHRC 2006, Ribhon 2002). All are unpaid sexual encounters or initiation rites except in the case of the *fisi* (hyena) where a man, known as the *fisi*, is paid, usually by the girl's parents, to have sex with her at night without her consent as a part of an initiation ritual.

A *fisi* may also be hired in a marriage to have sex with a wife when a man is impotent (Page 2019). However, they are not considered sex workers and are not stigmatized in the same way. Their role demonstrates the difficulty in defining sex work in the cross-cultural context because being paid for sex in the African setting may not be considered sex work nor deviant behavior (Forster 2000). The practice of hiring a *fisi*, in particular, became the center of much controversy in 2016, when the British Broadcasting Corporation (BBC) published story of an HIV infected *fisi*, Eric Aniva, who boasted about being paid to have sex over 100 girls. He was arrested in July of 2016 and sentenced to two years in November of the same year (Andrews 2016, Caldwell 2016). His story brought this practice and other sexual cultural practices to national and international attention at a time when the decision about the Pempho Banda case was still pending. The treatment of traditional cultural sexual practices and the rights of girls in contemporary culture had entered the mainstream once again. Many such practices had already come under attack by the government and non-governmental organizations (NGOs) that identified practices such as *chokolo*, *gwamula*, *kusunga mwana*, and *chimwanamaye* as being responsible for the spread of HIV/AIDS (MHRC 2006, Page 2019). However, attacking traditional sexual practices has been contentious and is often faulted for being motivated by western interests. Sex work is also often regarded as a western practice.

Even though sex work has occurred alongside traditional sexual practices for years, it is often regarded as a foreign import and immoral in the rural areas. Some scholars point to the lack of a traditional equivalent to the term sex work as evidence that it is seen as foreign. The Chichewa word for sex worker *hule* is believed to be a corruption of the Afrikaans word *hoer* (Forster 2000). Mizere also contends that because r's and l's are interchangeable in Malawian languages, it is more likely to be borrowed from the German word, *hure* which is also used pejoratively to describe sex workers (Mizere interview). According to Foster, such observations underscore the difficulty of incorporating western notions of sex work in to traditional sexual

practices (Forster 2000). The open nature of sex work and the autonomy that it provides Malawian women would therefore be antithetical to sex in Malawian cultural practices which are highly regulated by the woman's family or husband and culture. Sex workers stand outside of these socially sanctioned accepted cultural practices in part because their work is done openly, whereas many of the initiation ceremonies involving sex are private and secret (Mizere interview). Malawian society as a whole values group consensus and loyalty - dissent and individualism is discouraged. Therefore, as Booth et al. (2006) argue, this requires "in-group" members in Malawi to "be treated preferentially, for group interests to override the needs and disciplines of the larger society and for individual initiative to be suppressed" (19). Consequently, this may cause sex workers who are outside of group cultural practices and who do not conform to acceptable sexual practices to be frowned upon. In a culture that has enormous regard for authority (elders, parents, elites) and high levels of power distance, hierarchy is expected, and loyalty anticipated. Those without power in society, especially women and the poor, are expected to yield to authority; "less powerful people are expected to be dependent on more powerful people, women defer to men, subordinates envisage being told what to do" (Booth et al. 2006:18). The breakdown in authority and traditional values, including a perceived permissiveness in dress (wearing of miniskirts and trousers) is often blamed on the advent of democracy (Booth et al. 2006, Swidler and Watkins 2017).

Kamuzu Banda founded the country on four key cornerstones which permeate every area of Malawian life namely, "unity, loyalty, discipline and obedience" (McCracken 2012). As an autocratic leader, emphasizing such values served the interest of the state, so they were inscribed into Malawi's social fiber and used to control the bodies and sexualities of women. Outwardly displaying a puritanical persona as the former church elder in the Presbyterian church, he legislated a moral code in order to promote modesty. Under the moral code various sexual practices such as homosexuality and oral sex were penalized and prohibited. The censorship board was tasked to edit any sensual language or scenes in videocassettes and there were no national television providers so that foreign film and television shows would not influence the public's morality. Even songs such as Marvin Gaye's *Sexual Healing*, released in 1982, was banned. In schools, sexual education was banned and books with titles such as *Promiscuous Pauline* and *School Girl Sex*, which were also banned nationally, were not permitted. Likewise, the works of authors such as D.H. Lawrence, James Baldwin, George Orwell and Paul Theroux

appeared on a national catalogue of banned books (Mtenje 2017, Theroux 2002). In order to ensure female modesty, he legislated a dress code banning trousers for women. He also regulated the wearing of tight clothes, low cleavage lines, and hemlines of skirts that were above the knee. Fashions such as bell bottoms, afros, dreadlocks, long hair for both men and women were also illegal as he discouraged western “permissiveness” (Forster 2000, Gilman 2004, Mtenje 2017). Therefore, sex workers wearing miniskirts and such were regarded as indecent and as threats to morality by the general public. However, rarely did Banda actually enforce any arrests or legal action against sex workers, at times using them as spies. As long as they did not directly challenge his authority, they were left alone (Forster 2000, Swidler and Watkins 2017). The systematic arrest of sex workers in Malawi began after President Muluzi came into power when democracy was ushered in. Mizere recalls, “[d]uring the Kamuzu era, they never bothered arresting them... [Muluzi] ordered the police to arrest them ... and that's when the police started arresting them, before that, they just used to ignore them” (Mizere interview). In 2000, Muluzi ordered the police to start arresting sex workers found loitering in the streets and their clients in efforts to slow down the spread of HIV/AIDS. The aim was to charge them under the offense of “living on earnings of immorality” (Tenthani 2000).

Although Banda’s reign lasted until 1994, its impact on sexual attitudes and dress have lingered. In 2012 vendors in Malawi began beating and stripping naked women wearing leggings, miniskirts and pants in the streets, arguing that they were violating traditional culture and labelling it as a sign of loose morals or prostitution. However, women nationwide organized a mass protest - in pants. President Bingu wa Mutharika and then female Vice President Joyce Banda spoke out against this and ordered the arrest of those violating the rights of women. Nonetheless, such incidents underscore the lasting impact of the moral codes on the public display of sexuality in Malawian culture (Karimi 2012, Tenthani 2012). Therefore, sex workers who often wear miniskirts or tight pants to the chagrin of the conservative society, both in the rural and urban areas, continue to be stigmatized because of how they dress.

Malawi’s 1994 constitution promised to rid the country of the worst of Kamuzu Banda’s policies and ushered in democratic governance that was for the people. Human rights and equality became integral values of this new people-focused constitution. It had a Bill of Rights that was very liberal and more progressive than most countries in the region – it was pro-poor, and it promised women to be free from discriminatory practices. It allowed women to enter

contracts in equal capacity and to inherit and maintain property, and it otherwise secured their liberation (Ellet 2014, Gloppen and Kanyongolo 2007). It was also intended to pave the way to legal challenges or litigation to be accessible to the poor and to women by providing the rights to access justice, legal remedies, and administrative justice, thereby having the potential to ensure socio-economic rights for all, including sex workers. Given the mandate of the court, they increasingly became an important vehicle for keeping the power of the executive branch in check since the parliament was inconsistent in doing so (Gloppen and Kanyongolo 2007). The High Court and Supreme Court are authorized to hear all appeals, including constitutional ones. Under Banda's rule they lacked autonomy, but when his regime began to collapse, they were given greater freedom in what Banda considered a small concession in efforts to retain his power. However, they were effective in doing their job when facilitating his resignation, emerging as an important and strong institution in post Banda Malawi (Ellet 2014).

During the Bakili Muluzi era, the courts blocked Muluzi's attempt at adding a third term. In the era of Mutharika, they blocked several attempts at undermining the constitution. Most notably, they blocked the firing of then Vice-President Joyce Banda by President Mutharika and later an attempt to sidestep the constitution by circumventing her succession as President. They blocked an unconstitutional attempt by President Joyce Banda to nullify election results due to her accusations of irregularities. Therefore, their legitimacy has remained intact and their orders are usually respected by civil servants and the general population (Ellet 2014). Although the judiciary has its problems and an imperfect record, it is held in high regard. Malawians generally have confidence in the judiciary; therefore, it is not uncommon for Malawians to sue the government or file injunctions when they are aggrieved and expect a favorable outcome:

Malawi is probably one of the most litigious communities in Africa. Because people here will come to court for anything. And that explains to you why the politicians are afraid of us because they can't predict who will show up and when they will show up. And it explains to you why politicians will always run to court. Because in other countries it's the other way around, it's the court that runs to the politicians. But here somehow because we are litigious, and we are independent those politicians are confident that they will go there, and we will sort [it] out. (Anonymous Quoted in Freedom House Report)

However, much of the litigation has been from politicians and richer Malawians who have privileged access to justice. They also tend to focus on civil and political rights. Access to justice is still out of reach for many of the poor for many reasons. In 1999, the high court held that a woman's refusal to engage in sex should not always be taken at face value and a few years later

Justice Tambala argued against criminalizing marital rape at a legal conference. Barriers for poor people to litigate to realize their social rights may include: lack of knowledge about the legal process, the use of English as the official court language, the costs of court, and access to courts (courts are far from rural populations and poorly resourced) (Gloppen and Kanyongolo 2007, Kanyongolo 2006).

The most effective way the poor can achieve their social rights is through judicial review which happens at the courts in urban areas. Typically, in Malawi this is done through attempting to address the social issue directly or as in this case, advancing social issues strategically through a concrete situation to improve jurisprudence. However, this involves even greater costs and legal expertise because the litigants are expected to provide arguments and evidence for their case. The litigants also need to be able to organize and mobilize for a sustained collective action around an issue (Gloppen and Kanyongolo 2007). This cannot be met without the presence of associations such as FSWA nor without the assistance of organizations such as CHREAA and SALC. It also cannot be possible without an independent judiciary, and the values of the actual judge that presides over the case also influences the outcome. The judge's interests, motivation, ideological and professional values as well as their personal background are important in common law litigation (Gloppen and Kanyongolo 2007). These factors impact their ability to interpret the law in the way that is sensitive to the lived conditions of the poor. In the Pempho Banda case, Justice Ntaba's background is important to consider. Justice Ntaba is interested in development issues as well as women and child rights issues (Habitat III 2016). Furthermore, her legal areas of interests include constitutional law, human rights law and development law. Therefore, it is unsurprising that she makes the following comments about her interests in the case: "I believe in the concept of human rights and I believe in the constitutionality of our country but most of all, I took an oath to uphold the constitution" (Ntaba interview). Given the aforementioned factors, the legal environment was well suited for public interest litigation to advance the rights of marginalized sex workers.

The goal of strategic litigation is to change laws, policies, or practices that impact society or advance human rights and have lasting impact beyond the individuals with direct interest in the case (Ezer and Patel 2018). The Pempho Banda case was an important case in affirming that supremacy of the constitution. It showed that the constitution was meant for marginalized groups and that they still have rights even when there is a perception that they are criminals. It also

clarified that the living on the earnings of prostitution law was meant to protect sex workers and not criminalize them. This is important because the case can be used as an example for other countries whose legal system is based on British common law; they can point to this case as a precedent case when interpreting their own living on the earnings of prostitution clauses. However, the judgment in this case also has broader implications for southern Africa and the rest of the continent where sex work is criminalized. “It’s strategic, because courts listen to other courts. . . They are more likely to listen to another court in Africa as opposed to listening to what’s going on in the Global North. So, we can say to them ‘look, there’s another court in Africa who has affirmed this’” (Esterhuizen interview). Therefore, as a strategic litigation case, it has been successful. Sex workers in this case were part of an incremental approach by advocates to secure greater rights for them which started with the Mwanza 11, when advocates got the courts to affirm that mandatory HIV testing was a violation of sex worker rights. This was followed by the victory in the Pempho Banda case. After this, the Mayeso Gwanda case declared the Rogue and Vagabond laws as unconstitutional (Ezer and Patel 2018, Moshenberg 2015). Together, these three cases have laid the foundation to argue for decriminalization of sex work strategically.

Strategic litigation cases help shape public discourse through the court process, development of public records and mass media. In the Pempho Banda case, the court was forced to affirm the vulnerability of sex workers and to clarify their ambiguous status publicly. The court process obligated the state to respond to the specific policies and practices that targeted sex workers on record. This is important for constructing a historical truth about the treatment of sex workers based on their own narratives. Mass media facilitated the process by bringing the stories of the affected communities into public records as fact. The media was also important in helping translate complicated technical terms so that they were accessible to the general population (Ezer and Patel 2018). As such, the media has an ability to impact public discourse significantly. Therefore, their role is vital to the strategic litigation process and activists often engage media for these reasons. In the Pempho Banda case, the media was present during the court sessions and both SALC and CHREAA issued press releases to assist with the historical narrative and provide context to the case.

### *The Nature of Sex Work in a Postcolonial Context*

The Pempho Banda case highlights some key aspects about sex work in a post-colonial context. During Dr. Kamuzu Banda's authoritarian rule, the government promoted an agriculturally based economy from 1964 to 1979. There were few companies in the country in manufacturing or mining, but the GDP of the country rose by 5 percent each year (Booth et al. 2006). His government did make provisions for safety nets for the poor resulting in a decrease in infant mortality and in increase in calorie intake per person. Though his policies were consistent, there remained a large gap between the rich and the poor, and profits were being squeezed from the labor and land of the poor. Beginning in 1980 though, Banda's government then embarked on a process of economic liberalization by enacting the World Bank and IMF's neo-liberal policies, steering Malawi's economy toward greater privatization. They moved away from social services, leaving the poor to seek their own means to protect themselves from economic shocks and other malaise such as disease, food shortages, and unemployment. In comparison to other countries, Malawi's government was fairly compliant with the structural adjustment programs (SAPs), and subsequently was one of the hardest impacted by its failures. These structural adjustments, coupled with internal policies, worsened the situation for the poor, helping make Malawi one of the poorest nations in Africa today (Booth et al. 2006, Gloppen and Kanyongolo 2007).

The presence of sex workers in Malawi reflects Malawi's weak position in the global political economy. Malawi continues to be dependent on the IMF, World Bank and other NGOs for direct budget support. Its donor-dependent economy is constrained by policy inconsistency, poor infrastructure, high population growth, higher mortality rates, and poor health, nutrition and education outcomes that limit labor productivity (Booth et al. 2006, UN 2014). Poor people often earn their living in the informal labor market by poaching, vending, sex work, or participating in criminalized activities – which often requires them to live outside or in breach of the law, increasing their vulnerability to arrest or abuse. Women in particular were left out of the wage economy, apart from few opportunities for industrial work and jobs as domestic servants, teachers, nurses and clerical workers (Forster 2000, Gloppen and Kanyongolo 2007). This leaves many of them working in the informal economy. Subsequently, many women turn to sex work as a viable alternative to escape poverty. Their work is facilitated by a situation where women sex workers are reliant on wealthy males for their livelihood whose presence, status and money are

created by the demands of the global market. This includes demand created by transnational mobility in the form of international, regional, and local tourists, long-haul transporters who carry goods across Malawian borders for the market, cross-border traders along border areas, wealthy locals on business trips, and many other activities which maintain the dominance of male travelers over woman sex workers. This illustrates how sex worker in Malawi is embedded in the global labor market and relies on both local and global capital flows. Although NGOs and the government have tried different interventions, they are unlikely to resolve problems created by the structure of the global economy since they are funded by western non-profits and governments.

Beholden to NGOs, the elite in donor-dependent countries try to align themselves to NGOs and western culture in controlling what they consider harmful sexual practices. Gender and Development scholar Samantha Page (2019) characterizes the elite in Malawi as being educated in Malawi or abroad, with at least a secondary school education or more advanced degree; speaking English; and identifying as Christian. The elite are often vocal about blaming the poor for practicing “harmful” “backward” sexual cultural practices or blaming sex workers for spreading HIV/AIDS, and they seek to control the sexual behavior of the poor. Some scholars argue that attacking traditional practices and blaming the poor can be misguided. As an example, marital practices such as polygamy, a practice in northern Malawi where men marry more than one wife, may die a natural death without intervention. However, efforts to attack polygamy are contentious because they are seen as an attack on culture (Page 2019, Swidler and Watkins 2017). Once a practice is identified as traditional, members of a group often elevate it and reenact it in order to perform their identity. Therefore, teaching safe sex may be more effective and less contentious than trying to control sexual behavior through legislation (Gilman 2004, Page 2019). Such views through also reflect a broader, more complex problem of elites in post-colonial Africa distancing themselves from all traditional practices taking place in the rural areas in order to establish themselves as westernized, modern, and Christian (Page 2019:10, Swidler and Watkins 2017). Mizere observes:

Malawi is very conservative. Even though underground we do a lot of things... But we portray this image of conservative God-fearing people, so anything to do with people who show sexuality or something that is not the norm is looked down upon by the average Malawian. (Mizere interview)

Page (2019) argues that this identification of the elites as Christian is important because it informs the construction of policies involving sexual cultural practices (Page 2019:50). This includes the construction and interpretation of policies affecting sex workers which are informed by religion. Therefore, it is unsurprising that the text in the concluding section of the skeleton arguments of the Pempho Banda case includes a prayer requesting the convictions to be quashed, fines restituted, and judgment shared with relevant authorities is included (Maele 2016).

The approach to policy making that elites use align them more closely with the interests of NGOs and western practices over traditional rural ones. Any sexual relationships outside of what is thought of as a traditional western monogamous marriage are often publicly frowned upon by the elite. However, in a poor donor dependent country, repressing traditional sexual relationships largely benefits the elites (Page 2019). The attempts to control and legislate sexual behavior which are regarded as private and secret have continued to be contentious. Controlling sexual behavior through legislation by the post-colonial state demonstrates Michel Foucault's argument involving state's techniques aimed at regulating and managing the human body - particularly those of sex workers and women - who are treated like economically useful machines in the workforce. Biopower includes regulating working conditions, health, sexuality, reproduction, customs and habits by the state (Foucault 1978, Lakkimsetti 2014). The elite in Malawi control the state and understand sex workers to be participating in an immoral type of sex which is a threat to public health and one that requires control through the state or criminal justice system. Attempts to control sex workers therefore benefit the elite's alliances with NGOs and western governments who are concerned about the spread of AIDS and who support the country financially. In essence, western governments are still in control of the bodies of sex workers through the Malawian state.

The continual presence of the living on the earnings of prostitution law in Malawi's Penal Code demonstrates that western influence persists in the post-colonial state. Sex workers in Malawi are being targeted by a law which was intended to protect White women from slavery and human trafficking. Since the law was based on a 1912 amendment to the 1898 British Vagrancy Act to criminalize those living off White women sex workers, it is not relevant in post-colonial Malawi because it does not protect sex workers (Maele 2016). There is a need to interpret the laws in the Penal Code so that they are relevant to the local situation and today's context. In her ruling Justice Ntaba noted that Malawi has had "plenty of opportunity to fully

review the Penal Code and see if it is in tandem with the world we are living” (*The Republic v. Pempho Banda and 18 Others* 2016). The original law in section 146 itself was amended in England in 1956 and 2003 respectively, so that it became gender neutral and more reflective of today’s society. The case reveals that social issues are not always addressed proactively through reviews of bad laws but are changed through litigation – particularly laws that should be declared unconstitutional (*The Republic v. Pempho Banda and 18 Others* 2016). According to Banda and Meerkotter (2015) some laws under the vagrancy act go against rights guaranteed by the constitution such as the rights to development, dignity, movement, pursuit of a livelihood and freedom from discrimination, and they need to be reviewed for their constitutionality (Banda and Meerkotter 2015). Justice Ntaba makes the same argument and adds that although sex work is a contentious issue in Malawi, the law still does not criminalize the selling of sex (Ntaba interview). She further states that:

Malawi like many countries have realized that the hot “potatiness” is due to questions regarding what causes prostitution, issues of legislating people’s sexuality, high levels of organized crime especially trafficking, public health concerns due to the HIV/AIDS pandemic or rise in sexually transmitted illnesses, public safety, the exploitation of vulnerable people like women, persons with disabilities or children, continued inequality between men and women and human rights concerns, to mention a few (*The Republic v. Pempho Banda and 18 Others* 2016).

She argues that in spite of this, Malawi needs an open and frank discussion about the legal status of sex workers like in other countries, so that the law is no longer vague. Malawi’s Penal Code, like that of neighboring Zambia, Botswana, Tanzania, and many other former British colonies, continues to retain these archaic laws that single out the poor for harm (Banda and Meerkotter 2015). As in the Pempho Banda case, these types of offenses are used almost exclusively to target the poor and marginalized due to their status in society and not because they have participated in illegal activity. Many of these offenses are either no longer relevant or are ambiguous, allowing for selective targeting of sex workers based on their social status and legal status. The presence of this law also speaks to the broader issue of decolonizing Malawian laws - that is, the “move from a hegemonic or Eurocentric conception of law connected to legal cultures historically rooted in colonialism in Africa to more inclusive legal cultures” (Himonga and Diallo 2017:5). The post-colonial state is complicit in extending the reach and impact of colonialism if it does not address such laws. The state must not wait for interventions in litigation for the poor to get justice. Despite the hurdles sex worker activists face, the case still gives us

confidence that when interventions in the justice system do occur, sex workers like Pempho - whose name fittingly means “plead,” “appeal” or “petition” in Chichewa - will to get continue to justice.

## CHAPTER 3. SELLING SEX IN THE COURT OF PUBLIC OPINION: MEDIA NARRATIVES AND SOCIAL ATTITUDES

### *Introduction*

News about the triumph of marginalized Malawian sex workers in the Pempho Banda criminal case attracted attention about the legal and social status of sex workers worldwide. The purpose of this chapter is to explore the representation of sex work and sex workers in the Malawian newspapers and other news sources as well as the online commentary from the general public about this case. Understanding the nature of news coverage, public opinion, sensibilities and attitudes about sex work, and such research is essential because it informs future interventions that aim at improving sex workers' social and legal status. This chapter relies on qualitative data from a survey of English-language news articles published about the case in 2016 and 2017 as well as the commentary on those articles. The data will be analyzed using relational content analysis.

The media both reflects and influences society. News articles are regarded by scholars as a source of shared knowledge, values, prejudices, and ideologies in society (Hunt and Hubbard 2015). They reflect these social dimensions through how they cover the story – what they emphasize, what they omit, word choice, and so forth. Since news articles are seen as credible source of information by the public, their propensity to influence them is great (CASAM 2007). Thus, the media is an agent of socialization that shapes public opinion and ideas, and this is also the case about sex work. This chapter examines how media represents and presents sex workers in this case. Media is also an important tool for understanding perceptions about sex workers in society because commentary on the newspaper's website or social media provides a space for the public to express their opinion. The perceived anonymity of online commentary also makes it a space for deeply held and unfiltered opinions (Erzikova and Simpson 2018). This chapter therefore starts to unpack the nature of public opinions about sex workers. I contend that whilst opposition to sex workers is expected, given conservative religious views common among Malawians, there is also support for social and legal justice for sex workers. This suggests that public opinions about sex work are nuanced and represent a range of social attitudes.

### *Overview of Media Coverage and Public Opinion in Malawi*

Among the various forms of mass media, newspapers and other news sources in particular provide vital information for many people. Readers expect their newspapers to inform them about events and provide credible information about them from experts. Apart from being a vehicle of information, this is where much of the public typically learns about political issues. They learn what issues are important, what the majority of the population thinks about those issues and expert analysis on issues. This has an influence on the public. In most societies, the news media both reflects and shapes public opinions. Due to the media's power to influence public opinion formation and change, it is an agent of socialization similar to family, friends, or educational, religious or political institutions (CASAM 2007, Perse 2000). "The news media select some information and highlight it to the exclusion of other information. News frames define problems, provide causal attributions, give moral evaluations, and imply a policy direction" (Matthes 2010:2). News coverage reflects journalist's and news agencies' viewpoints. Analyzing online media coverage of the Pempho Banda et al. case therefore can provide us valuable insight on how sex work is framed in Malawian media and how sex workers are represented there. This makes news media a powerful tool for gauging the political, socio-economic, cultural and religious climate of the country which inform public opinion (Pudifin and Bosch 2012).

Although social attitudes and public opinion are related and are sometimes used interchangeably, they differ slightly in meaning. The definition of social attitudes offered by social psychologist Daniel Katz is that they are the organization of beliefs and feelings of a person at the individual level that makes them define an object or symbol as positive or negative (1966). Public opinion on the other hand, is defined as focusing on matters of political concern to the group or collective. It thereby involves mobilizing and channeling individual responses to affect group or national decision-making (Katz 1966). Elizabeth Perse defines public opinion as a group consensus about matters of political concern which develop in the wake of informed discussion (2000). This includes expressions about matters of public concern such as discrimination against sex workers in the criminal justice system. Taking stock of them can help us gauge viewpoints about social issues surrounding sex work such as stigmatization as well as support for policy changes such as decriminalization (Pudifin and Bosch 2012). However, arguing that the distinction between the two terms is typically not useful, Bergman (1998) uses

them interchangeably, noting that trying to distinguish between the terms typically does not offer any real clarity. Therefore, for the purposes of this study, social attitudes and public opinions will be used synonymously. They will broadly be defined as the, “expression of beliefs, ideology, and sentiment within a citizenry with regard to the conduct of human affairs” (Freeland 2015).

There is a relationship among public opinion, media, and the political process. The concept of public opinion arose due to the rise of democracy and is premised on the notion that a legitimate government should rule in accordance to the will of its people, the underlying assumption being that democracy requires citizens’ opinions to help shape policy (Carballo and López-Escobar 2018, Shapiro 2011). In reality, the general public only occasionally shapes national policies. The elite exercise social, political and intellectual hegemony over the general public and define the direction of policy change. However, they often frame policies as expressing shared values, implying the consent of the general public. Although the elite often overlook the interests of the poor, at times, they respond to populist concerns for political necessity (Chikonzo 2017, Quirk and Hinchliffe 1998, Shamir 2004, Shapiro 2011). Therefore it is still useful for a government to take the views of the poor and the elite into account and not take the consent of people for granted (Pudifin and Bosch 2012, Shamir 2004).

This is true in a young democracy such as Malawi where politicians make great efforts to present their policies as having public consent, and to present themselves as defenders of common-sense morality. One case illustrates this point. In 2009 a Malawian newspaper covered a story of a same-sex couple performing a traditional engagement ceremony. This resulted in the arrest of the couple and their subsequent release due to the intervention of United Nations Secretary General Ban Ki-moon. This was at a time when donors had abandoned Malawi during the administration of Bingu wa Mutharika, using this case - and other human rights abuses - to justify withholding aid to the donor dependent and socially conservative country, which had sent the economy reeling. When newly appointed President Joyce Banda considered reviewing the country’s anti-sodomy laws in 2012, the power of public opinion on this issue was notable. After Banda announced that she wanted to review such “bad laws” she was met with considerable opposition from religious and civil society organizations. The local newspapers and general public interpreted Banda’s move as merely an attempt to appease international donors. Within a few days, she reversed her decision using the justification that Malawians were “not ready” to

live in a society where homosexuality is decriminalized and would need to continue to debate the issue without donor intervention (Demone 2016, McNamara 2014).

This example underscores that public opinions in Malawi can affect policy, even when the outcome is fundamentally contrary to the constitution and human rights which are guaranteed for all under the constitution. According to Pudifin and Bosch (2012), citizens are more likely to view policy reform as legitimate when their opinions have been sought out and considered, “even if the final policy goes against their own personal views” (Pudifin and Bosch 2012:3). They observe that sometimes the opinion of the public may be distorted, based on stereotypes or otherwise misguided, making it imprudent to use as a basis for policy recommendations as in the case of sex workers. However, gauging the temperament of the public has also been useful in promoting human rights and democracy. Malawi’s transition from autocratic to democratic rule, after much public discontent, was preceded by a referendum in which Kamuzu Banda sought the public’s opinion about the future of the country’s governance. When the results indicated that 63 percent of the voters opted for change, the dictator stepped down and called for elections, leaving the High Court to rule on cases arising out of the referendum (Ellet 2014). Therefore, gauging the public on sex workers and sex work can provide us valuable understanding of public perceptions of sex workers which facilitate their marginalization and justify their exploitation. It may help identify the source of stigma, stereotypes or misinformation which advocates, politicians, policymakers, NGOs, or actors in the criminal justice system can work towards dismantling. It may inform the type of interventions or remedial programs that can successfully be used to help improve sex workers’ social and legal status. If the government’s policies align with that of the public, it can also give the appearance that it is democratic, open and accountable to the will of the population.

The use of digital media to express opinions about policy and politics has increased in popularity over the years. Many Malawian print newspapers and other news sources now have an online format and others are available strictly online, making the news more widely accessible. Online comment sections have enabled readers to communicate to a network of people they otherwise would never reach. Online comments also give them a chance to interact with the journalists (gatekeepers), who may make decisions about future stories as a result of the comments. Consequently, “newspaper websites have become platforms of democratic debate” (Erzikova and Simpson 2018:1150). However, because online commentary allows for audience

anonymity, it also has become a space for uncivil comments and extreme views (Erzikova and Simpson 2018). This has prompted some news media to move their commentary sections from their website to social media platforms.

Commentary on news sources' social media pages also create an opportunity for deliberation and debate on issues of common concern which help form public opinion. Social media sites such as Facebook, a social networking site, have been increasing in popularity. Malawi had approximately 720,000 users on Facebook by the end of 2017 (Miniwatts Marketing Group 2019, Steenkamp and Hyde-Clarke 2014). Opinions shared on Facebook are less anonymous, thus posts may be less provocative. However, incivility from social media trolls whose main role is to post inflammatory and controversial statement messages still occur there. Nonetheless, given the popularity of social media as a space for deliberation on controversial issues, analyzing commentary from Facebook together with those from the corresponding news source's site is useful for drawing out the public opinions and narratives about the case.

This study starts to unpack the nature of public opinion toward sex workers as expressed through framing in the country's online media as well as the accompanying user generated commentary about the Pempho Banda et al. case. These narratives gauge the mood of the public and the support for policies toward sex workers at the time the case took place. In order to better understand the social, legal, political, and economic environment in Malawi through framing in digital media and public opinion, the chapter is guided by the second research question:

*What was the dominant framing of the Pempho Banda case in the mass media, what were the primary narratives as expressed in public opinions about the case and what do these reactions reveal about socio-cultural attitudes towards sex work and sex workers in Malawi's tourism sector?*

### *Methodology*

To respond to this research question, a narrative content analysis was conducted of newspaper articles and their corresponding commentary. This allows the study to draw out pertinent thematic narratives and dominant frames which are systematically recorded and analyzed communications (Babbie 2010). The universe from which communication were chosen was Malawian English language digital newspapers and other news sources that covered the case. English language online or hybrid (print and online) news media were selected because

they reach the elite in Malawi who are engaged in decision making – that is, the English-speaking Christians that have a high school or college education, and may work for government, NGOs, or private companies. Malawian journalists are considered part of the elite in Malawi. The news they produce also reaches the elite readers in Malawi. The opinions of the journalists and citizen elites are important because they influence policy and they are the decision makers (CASAM 2007, Page 2019, Perse 2000). Online news sources and Facebook are still not accessible to a large percentage of the population. According to internetworldstats.com, internet penetration in Malawi at the end of 2017 was only approximately 1,828,503 million out of a population of 19 million, and Facebook usage was 720,000 (Miniwatts Marketing Group 2019).

News sources were gathered by searching for online for news articles, opinion pieces or editorials about the case from the years 2016 – 2017. This was conducted using Discovery Search, a search engine of article databases provided by Virginia Tech library. A search through Google.com, an online search engine, was also conducted because not many Malawian news sources are indexed in the former. A total of 11 news online newspapers and other online news sources were identified. These predominantly consisted of news articles but included two press releases. The analysis was conducted using line-by-line technique in MAXQDA data analysis software. The relational approach to content analysis was used. That is, specific words and themes were identified to determine the relationship between concepts (Carley 1990, Pennings et al. 2005). The content analysis also made use of the narrative tradition to identify the dominant narratives in the news articles.

Creation of coding categories for the news articles used both inductive and deductive methods. Inductive methods involved starting with broad categories and then re-reading the text and recoding the data into more suitable categories. Deductive methods involved using similar categories as in the code book of CASAM. This previous study, conducted in India, examined how sex workers were represented and presented in Indian newspapers. Using both inductive and deductive approaches to coding was useful in addressing the research question by allowing themes typically used when writing about sex workers in a Global South context to be integral to the process of deductive conceptual analysis while allowing for themes to emerge direct from the data using inductive coding (CASAM 2007, Fereday and Muir-Cochrane 2006). The coding resulted in six main categories: DESCRIPT (descriptive data or survey of the articles), PRESENT (presentation and representation of sex workers in the articles), LAWART (mentions

about human rights and law in the article), JUDICIALART (mentions about the Judicial system, including Judges and the courts in article), POLICEART (mentions about the police and law enforcement in the article), and ADVOCATEART (commentary about non-profit organization and civil society advocates in the article). These 6 categories were further divided into other categories and used to code the news articles, resulting in a total of 889 coded segments. These were used to make inferences about journalists' framing of the case.

In order to analyze the digital commentary, data was collected from the 13 English language Malawian digital news articles previously identified as having content about the case. The data was gathered from each news source's actual website and Facebook page. The comments on the website were identified, compiled and filtered for spam. Spam is unwanted messages posted as comments containing vague or irrelevant messages, advertising and/or containing hyperlinks of malicious sites or advertising (Kim et al. 2016, Sohrabi and Karimi 2018). A Facebook search of the commentary about the same articles was conducted in order to identify, compile and check the commentary for spam. Some articles had commentary on their website only, others had commentary on Facebook only, others had commentary both on their website and Facebook, and yet others had no commentary. A total number of 466 comments were identified for analysis, with 96 of them identified as spam. Three hundred seventy were analyzed. Comments written in Chichewa and Chitumbuka or English combined with the aforementioned languages were taken to independent translators for interpretation. These were analyzed with MAXQDA coding software.

To organize the data, coding categories were created using both inductive and deductive methods. These included including some of the same codes from the CASAM study used in the newspaper content analysis. This resulted in five main categories: DESCRIPTIVE (a conceptual or thematic description or survey of comments), POLICEACT (comments about the police or law enforcement activities), JUDICIAL (comments about the judicial system including judges, courts, and the judicial process), LAW (comments about the sex work with regards to the law or legislation), and ADVOCATE (comments about NGOs, civil society or lawyers). These 5 categories were further subdivided into smaller categories and applied to the 370 comments, resulting in a total of 2,240 coded segments. This data was used to reveal what the public opinions and social attitudes surrounding sex workers and sex worker issues.

### *The Dominant Framing of the Pempho Banda Case in Mass Media*

The role of the media is important in strategic litigation cases such as the Pempho Banda case. Strategic litigation is the practice of lawyers using legal cases to advance social changes or human rights for the benefit of the larger society (Gloppen 2005, Nkhata 2008). Lawyers engaging in strategic litigation cases often rely on the media to inform and sensitize the public about such cases (Ezer and Patel 2018).

The Malawian media was present during the court hearings of the case and reported about it. The media helped to bring the story of the case to the foreground, raised public awareness about the issues, and made the central issues related to the case accessible to the public. According to Ezer and Patel (2018), the media complements strategic litigation advocacy through its ability to influence public discourse and is thereby considered a core part of the strategic litigation process. Advocates often try to engage the media by building key relationships with journalists, issuing press releases, placing opinion pieces in papers and using social media to keep media and others informed (Ezer and Patel 2018:154). Therefore, Journalists are an important ally for cases that advance social justice and aim for social transformation.

Journalists do not simply reflect the activities, events, nor socio-political realities of a narrative. Rather, the narrative they communicate is a filtered view of the related issues because it has been subjected to multiple selections, modifications, and interpretations. It is a construction which involves the journalist or editor emphasizing a particular problem definition, interpretation, moral evaluation, and/or treatment recommendation for a particular viewpoint based on a perceived reality. Although they do not directly tell people what to think, they can set the agenda by telling readers what topics and issues are important and why (Matthes 2010, Meriläinen and Vos 2011). The interpretation of journalists in English language media that covered the Pempho Banda story, is particularly important in that it reflects and informs the viewpoints of the Malawian elite who influence policy. Due to the importance of the media in shaping or changing public opinion as well as creating the historical narrative of the case, it is prudent to pay attention to how the Malawian media framed the case (Perse 2000).

The case was covered by several online news sources in Malawi which were used for this study. A total of 11 digital newspapers and other online news sources which covered the case were included in the study including the following: prominent hybrid newspapers *The Daily*

*Times* ([www.times.mw](http://www.times.mw)) and *Malawi Nation* ([www.mwnation.com](http://www.mwnation.com)); online news sources owned by radio stations, *Zodiak Malawi Online* ([www.zodiakmalawi.com](http://www.zodiakmalawi.com)) and *Capital Radio Malawi* ([www.capitalradiomalawi.com](http://www.capitalradiomalawi.com)); digital only newspapers *Nyasa Times* ([www.nyasatimes.com](http://www.nyasatimes.com)), *Maravi Post* ([www.maravipost.com](http://www.maravipost.com)), *Malawi 24 News* ([www.malawi24.com](http://www.malawi24.com)), and *Malawi News Now* ([www.malawinewsnow.com](http://www.malawinewsnow.com)); the website of human rights journalism NGO *Centre for Solutions Journalism* ([www.csjnews.org](http://www.csjnews.org)); and press releases from advocacy organizations CHREAA and SALC which were also reprinted on other media sites. Two of the news sources, *Zodiak Malawi Online* and *Malawi 24 News*, printed two stories each about the case. These articles were all published between September 6, 2016 through March 8, 2017.

Overall, the articles from newspapers and other news sources covered the case in a just manner and focused on the factual details of the events, as well as the narratives of the advocates involved. They steered away from salacious or sensationalist headlines often found in news pieces about sex work (Nyembe et al. 2014). Most of the headlines were descriptive, such as “Malawi High Court Acquits 19 Sex Workers” (Ligokeka 2016, *Malawi News Now*), “Sex Work Is Legal in Malawi: CSOs Hail Court for Backing Sex Workers” (Malenga 2016b, *Malawi 24 News*) and “Court Favors 19 Sex Workers” (Malikwa 2016, *Malawi Nation*), simply highlighting the ruling in the case. In an analysis of existence and frequency of concepts in the articles to determine how sex workers were represented and presented, the articles were also largely “neutral” in that they were free from sensational content. They focused on narrating the story with attention being paid to the arguments presented, the court ruling, and expert opinions. Most of these arguments and expert opinions promoting the liberal ideas of individual and human rights, thereby, the news articles helped advance liberal ideas (Bell 2014). The articles were informative about the central legal issue of the case. They cited the actual written law in many cases, for example, “Justice Zione Ntaba of the High Court noted it was clear the arrests of the sex workers were carried out to embarrass and harass them as Section 146 of the Penal Code does not criminalise [sic] sex work, but seeks to protect them from those who exploit them” (Correspondent 2016, *Maravi Post*). They also explained the technicalities of the case, noting some of the procedural irregularities in policies and practices that were in conflict with the law; for example, “the high court has dismissed the lower court’s ruling because the magistrate that handled the case had no jurisdiction to hear such an offence. She also observed that the 19 women were not given a chance to be tried individually” (Aubi 2016, *Zodiak Malawi Online*).

The articles unequivocally declared that the sex workers were discriminated against and that their rights were violated in this case, for example, “Lots of sex workers continue being discriminated and abused through the law” (Monjeza 2016, *Capital Radio Malawi*). Many of them drew on both the legal and human rights aspects as central issues the case. Therefore, words that espoused liberal values such as “freedom,” “liberty,” and “justice” were used, making it clear that sex workers were entitled to this protection under the law, as in this example: “Judge Zione Ntaba defined earlier proceedings in the Dedza Magistrate Court as irregular, unfair and biased, an affront to justice and unconstitutional as arrests violated the women’s right to liberty” (Kamlomo 2016, *Zodiak Malawi Online*). Issues concerning legal rights for women in the public locations were brought up focusing on how sex workers were targeted for being women in hospitality locations. Socio-cultural perceptions that women in bars, motels, hotels and other hospitality locations were sex workers was also a focal point of most articles. In that they criticized the knee jerk assumption that women in these places were sex workers. The majority emphasized the judge’s comments about gendered spaces in Malawi’s tourism and hospitality locations; for example, “Judge Ntaba said hotels, inns, rest houses and motels are not meant for men only but for both men and women” (Chilunga 2016, *Nyasa Times*). The articles also reiterated that arresting women on suspicion of sex work, whilst leaving the men, was gender discrimination. For example, “Judge Ntaba said the law does not criminalise against women prostitutes only” (Chilunga 2016, *Nyasa Times*). As a vehicle of information, the articles detailed the events of the case but also prominently framed the case from the perspectives of human rights, legal rights and gender rights. The promotion of democratic rights-based policies for women sex workers is also consistent with liberal perspectives advanced by liberal feminists (Bell 2014).

The lower courts were presented as institutions in which marginalized groups could not normally realize their rights. All the stories noted the shortcomings of the lower court as it relates to this case. However, only two put it in context by noting that the lower courts needed better resources, capacity building and additional training for staff. A follow-up article also faulted the lower courts for not returning the fees to the sex workers in a timely fashion. They noted that “officials from the Judiciary could not be reached for comment on several attempts, but acting Registrar of the High Court, Agnes Patemba, told Pac [sic] members last week that sometimes it takes time to refund money to those acquitted due to several factors, including lack of relevant

documents” (Kashoti 2017, *The Daily Times*). In contrast, the High Court was depicted in a more positive light as the court that administered justice and a “fair” judgment. The judge in the High Court case was quoted often across articles as an expert on the topic and the High Court judgment court was generally presented as promoting justice. SALC’s press release quoted lawyer and advocate Esterhuizen supporting the court’s ruling through his remarks: “though we still have to study the judgment, we nevertheless believe that it is a remarkable vindication for many sex workers who are unlawfully arrested under this offence without any evidentiary basis” (CHREAA 2016).

Throughout the articles, expert opinions were heavily relied on, which helped to provide authenticity as well as frame the issues. A core liberal agenda of civil society and international NGOs has become to intervene in state matters and promote an image as the champions of individual liberties and reform through their work (Escobar 1997). As such, the non-profit advocates were depicted as allies to sex workers with a liberatory agenda. One paper noted, “The women, who had no legal representation during the first trial, with support from the Centre for Human Rights Education, Advice and Assistance CHREAA and Southern African Litigation Centre (SALC), they later brought a review application against the conviction” (Aubi 2016, *Zodiak Malawi Online*). Another noted, “sex workers in Malawi face a myriad of challenges and have been seeking legal interventions to claim their rights” (Correspondent 2017, *CSJ News*). The message concerning the advocates’ role was that the women were in a disadvantaged position and would not have received justice without their interventions. Otherwise, the role of the experts in the articles was to provide professional opinion and background context to the situation. This is consistent with observations from development scholars that NGO professionals are often held in high esteem as experts with specialized knowledge in development (Escobar 1997). Many of the newspapers specifically mentioned that they were quoting from statements released by the advocates. Advocates’ influence is evident in the approach to stories, the experts who were quoted, the frequency of sources quoting them, and the themes which focused on the ruling as an advancement of legal rights and human rights.

When surveying the issues related to sex work that were mentioned in the articles (PRESENTSWIssues), police activity was a central theme. The police were mentioned in an unfavorable light, largely featuring as perpetrators of abuse, human rights violations and arbitrary arrests. None of the articles quoted them, explained their perspectives or otherwise tried

to humanize them. “‘Policemen are the most [frequent] officials who use their profession to rape these prostitutes but what they forget is that prostitution is not a crime according to our constitution, thus it is unfair to violate the rights of prostitutes in the country,’ observed Mhango” (Correspondent 2017, *CSJ News*). Instead many papers mentioned the discrimination and marginalization that sex workers faced by police and other authorities, framing it as an on-going problem: for example, “Discrimination against sex workers in Malawi is an issue that keeps coming out with increasing cases of routine harassment by some police officers through arbitrary arrests and sexual exploitation” (Kamlomo 2016, *Zodiak Malawi Online*). Several articles also mentioned the related laws that police use to target sex workers. For example, “Currently, selling sex is not criminalised but a number of laws ranging from rogue and vagabond, earning money through prostitution continue to suppress a group of marginalised of sex workers who are not able to defend themselves properly when brought before the court of law even when they are innocent” (Monjeza 2016, *Capital Radio*).

Sex workers were generally presented and represented as unfortunate due to circumstance. In surveying what dimensions of their personal lives were emphasized (PRESENTCSWLife), aspects such as stigma, marginalization, violence, clients, livelihood, health and morality were identified. However, the most frequent topic was their livelihood – usually about fines they were charged or owed as well as poverty. These observations reinforced to readers that sex workers were members of a subordinate socio-economic class. Although a few newspaper articles mentioned that poverty was what prompted them to become sex workers, most articles avoided debating the morality of sex trade. When morality was directly mentioned, it was framed in a way to elicit sympathy for sex workers. One article quoted defense lawyer Maele noting that “while some view prostitution as immoral, others view it as a profession that brings food on the table of the practitioners” (Correspondent 2017, *CSJ News*). Otherwise, morality was indirectly mentioned in relation to human rights and their treatment – such as lack of access to healthcare due to their status - but not in relation to the nature of their work. This suggests that journalist made attempts at humanizing them which indicates that journalists had a liberal orientation.

Overall, sex workers were largely referred to as “commercial sex workers” or “women,” indicating that the journalists recognize sex work as work; “sex workers” is also the term preferred by pro-sex work feminists and sex workers but denounced by anti-sex work feminists

(Mgbako 2016, Weitzer 2005). On occasion a less flattering term such as “prostitutes” was used. In two of articles, in addition to “sex workers” they were also referred to interchangeably as “hookers” and “bar girls.” The reference to the latter though, was in relation to the Kishindo (1995) study about “bar girls” which used the same terminology. Although sex workers otherwise were typically referred to using “sex workers,” which is the term sex workers prefer, their opinions were less favored by journalists who typically did not seek out sex workers’ opinions (Weitzer 2005). The opinion or reactions of academics, government representatives, and lawyers as experts were often privileged by journalists. In the few instances that the opinions of sex workers were quoted, they were those of representatives of sex worker organizations. The most quoted sex worker out of the three respective sex workers was Zinenani Majawa, a spokesperson from FSWA. She noted that “now sex workers are more aware of the fact that procedures in court cannot be compromised, simply because the accused are sex workers. This is a message to the nation that no one should be denied access to justice based on their status” (Correspondent 2016, *Maravi Post*).

Generally, the historical narrative of the case focused on human rights, legal rights and access to justice as they related to the activities and events of the case. Sex workers were depicted as marginalized victims of poverty, injustice, abuse, and gender-based discrimination within and outside of the criminal justice system. The journalists fostered understanding for sex workers - there were few comments debating the morality of their work or about what work they do. However, many of the articles also mentioned that the country needed to have open discussions about the status of sex workers because it was an on-going problem. For example, “This comes as law scholars in Malawi continue calling for a review of some laws of the constitution so that they are easily interpreted and relevant with the changing times (Monjeza 2016, *Capital Radio Malawi*). Another article included the following: “[Maele] said he was happy with the judgment and supported Justice Ntaba's observation for Malawi to discuss and find a lasting solution to confusions that surround issues of prostitution in the country” (Kamlomo 2016, *Zodiak Malawi Online*). This implies that that newspapers aimed at deriving sympathy and support, which means SALC and CHREAA were successful in engaging the Malawian press as part of media advocacy for their strategic litigation case.

*Primary Narratives from Public Opinions Responding to Coverage of the Case.*

The High Court ruling in the Pempho Banda et al. case was based on procedural technicalities and clarification of the ‘living on the earnings of prostitution’ law. Although the deliberations took place in open court in which members of the public are welcome to attend, the public paid little attention to this case until the ruling was publicized. The arrest and abuse of sex workers was a routine occurrence in the country. Prior to the ruling, interest in the case was largely limited to the litigants, criminal justice system actors, human rights organizations, sex workers and some members of the press. The subsequent conversation about the legal status of sex work entered public discourse because sex workers challenged the law - and won - thereby paving the way for public debate about their rights. Otherwise, the general Malawian public had little influence on the daily deliberations of the case. This makes it difficult to gauge where the public stands on sex work based on the ruling alone. One cannot determine if there was public support for the ruling, sex work, or sex workers or similar strategic litigation cases affecting them based on the outcome. Instead one must examine public opinion to help us understand their sentiments in the context of Malawi’s socio-economic, political, cultural and religious climate. Whilst there are several ways to gauge public opinions – including polls and focus groups – examining commentary provides us a chance to analyze instant and candid reactions to the case. Digital technologies are changing the way in which citizens spread or share their ideas. They are also changing how public opinion is debated, negotiated and formed (Erzikova and Simpson 2018). The commentary from digital media websites and Facebook are particularly useful for the present purpose in that they include commentary from the English-speaking, educated elite members of the public who are more likely to read their news online.

A total of 370 public comments about the case appeared on newspaper and other online sites that were searched (there was no commentary on the sites of the other news sources). These were coded into mutually exclusive categories as having a positive, negative or neutral tone (Table 1). Most comments (205) were negative, i.e., falling into the anti-sex work camp by expressing the opinion that sex work was bad or was not good for society. They were identified by containing words with negative meaning such as “violation” as in the example: “and he calls himself a ‘lord’ ‘justice’ and they nick name them ‘sex workers’ promoting violation of God's Supreme Laws. Know that you are setting a [rebellion] against God, and He is Watching. Remember! No sin will go unpunished” (Bravo Bashir Dowd). These 205 negative comments

were further divided into subcategories for either expressing pessimism, shock, apathy, anger, negative humor or stigmatizing sex workers within their comments; the plurality of these comments were pessimistic.

In contrast, some comments fell into the pro-sex work camp, regarded sex workers as workers, and reacted sympathetically or positively to the news stories (Table 1). These 101 positive comments were further divided into categories identifying them as being non-judgmental, sympathetic, optimistic, joyous or expressing affection; for example, “apanga bwino munthu amamulesa ntchito? [they have done well, does one stop people from working?]” (John Jana). Most of the positive comments expressed joyous sentiments. The remaining 64 comments included those that were ambiguous, unintelligible, off topic, seeking clarification or otherwise unclassifiable as positive or negative.

Public comments also suggested that sex work was either overall good and useful or bad and not useful (Table 2). From these comments, 99 of them suggested that sex work was bad or not useful, 30 suggested that it was good or useful and 55 comments were neutral. Although, the majority of comments can be regarded as anti-sex work, not recognizing sex workers’ work as legitimate, it was common for online commentary to be uncivil and for comments about controversial topics in particular to be extremely negative. Readers tend to be influenced by other comments which suggests that public opinions regarding sex work by readers may change due to this dialogue (Erzikova and Simpson 2018).

Among the majority of readers holding an anti-sex work stance, some held sex work as being responsible for the poor state of the economy. One reader opined that, similar to narcotics, sex work should be illegal because it costs money, “...and we lose billion + in fighting HIV/AIDS....lets [control] the contributing factors thus by [prohibiting] uhule and [drugs] like alcohol” (Clement). Other readers made similar observations, one blaming sex workers for using government funding for antiretrovirals (ARVs): “does the Government have enough money for ARVs to support this movement?” (Lot). Another reader, Paul, made similar links to the economy that sex work will lead to population growth that the country can’t contain. The general feeling was that the government should be spending their time and resources on more pressing matters; for example, “government is this [your] one way of job creation or what???? shame on you guys” (Atusaye). Many readers also considered sex work or sex worker's as having a negative impact on or posing some type of threat to their communities: for example, “prostitutes

are not needed in our country they only destroy families and bring confusions in communities. They are not relevant in today's world" (Kamanga). Others saw sex workers as threats to families. For example, "Job or no job, prostitution is adultery. It is sin. Exodus 20v14. Married men are majority customers who in turn poison their families at home. Look at the picture of Malawi" (Madimbo). In short, these readers blamed sex workers for various forms of social malaise including threatening marriages, spreading disease, and encouraging moral decay.

An underlying theme in the commentary were issues of morality surrounding sex work, that is, whether sex workers were participating in behavior that was right or wrong. The majority commenting about morality opined that sex workers' activities were immoral or bad, as in this comment: "[t]echnically, there was a miscarriage of justice which I agree entirely. However, these immoral misfits should not have been left scot free. They have to pay some price, however small it may be. The way Zione [Ntaba] has put it, its heroic for a woman to be a whore" (Elder Sage III). A few argued that sex workers were neither good/moral nor bad/immoral and defended their behavior; for example, "odya zake alibe mlandu akudya zawo nawo ["The one who eats his own sweat has not broken any law because they are eating their own"]" (Kwangu). This last comment suggests that since sex workers labor to support themselves, they are not breaking any moral laws. In the few cases where the reader was defending sex workers based on morality, they still placed moral judgment by regarding sex work as immoral and casting sex workers as sinners; for example, "amene sanachimwepo akhale oyamba kuponya mwala pa mukazi wachigololo. Ndasamba mumanja ine ["Let he without sin cast the first stone, I am washing my hands"]" (Sankhan). An overwhelming number of comments used religion as their measure of morality. Religious doctrine seemed to anchor most of the negative opinions related to moral behavior and was used to prophesize what would become of sex workers and the country as a whole because of sex work. Therefore, it was common to see comments such as "????? Judgement dae ikubwera ["Judgment Day is coming"]" (Charles) or ".....and Babylon shall fall!" (Douglas). Other similar comments suggested that evil had already befallen the country, for example, "the end has come" (Thomas).

A minority of readers, though, expressed less resigned sentiments about the role of sex work in society and were in the pro-sex work camp. These comments perceived sex work or sex workers as non-threatening or having a positive impact on the country. The majority of these focused on economic factors and the right of sex workers to earn a livelihood, as in this

comment: “no job opportunities in Malawi, let them do. That is self employed, feeding themselves” (Chimwemwe). Some felt that workers contributed to the economy: “the ruling had to be over turned indeed as such malpractices do exempt from GDP. others include. theft. gamblelin etc yet they do contribute to the economy by making people exchange hands of Malawian kwacha. thus contributing to the central bank monetary policy. Uhule ndi ntima#” [“prostitution is my heart#”]” (Kaiser Falcon). Others though, felt that sex work needed to be regulated and incorporated into the formal economy so that it is not an illicit business; for example, “get it clean. Are u legalising prostitutes/sex trade? Then they must be registered and pay tax like other bussineses” (Michael). Others agreed with this sentiment: “like all work, M.R.A ilowepo apa, nawonso azipereka P.A.Y.E [“Like all work, Malawi Revenue Authority should intervene here, and they should also pay ‘Pay As You Earn’ taxes”]” (Wapaphata). These reactions are consistent with the perspectives of liberal feminists who support reforming the sex trade through regulation to create an socially valued institutionalized occupation (Beran 2012).

Many of the readers supporting sex workers expressed functionalist perspectives, arguing that sex work was practical for the country, as in this comment: “to be sex worker doenst mean guilty. If we don’t need their services, lets be [quiet] BUT there are others who need them more. If u take them out, are you telling the nation's men to rape innocent girls?” (Blessings). Other readers agreed that sex workers were useful to society and noted that they prevented sexually deviant behavior or helped their marriages: “zandewu muma banja zatha nkazi akango kana kukupatsa wawutali kunsewu kukawupeza pick ‘n pay [“we won’t beat our women in our marriages anymore, when she refuses to have sex, you will just hit the streets and find pick and pay”]” (Simon). Another, noting the increase in male sex work, argued that it also helped women in marriages: “masiku ano amuna akumapanganso uhule” [“nowadays men also are prostituting”] . . . By the way, married women are also tired of men who are failing in bed because of satisfying themselves with prostitutes. Women are increasingly having extra marital affairs, well, to help themselves. So the era of glorifying men’s promiscuity is coming to an end” (Nachisa). One man argued that it was in fact more moral to engage sex workers then to resort to behavior that he thought was dishonorable:

We men of integrity are happy with the work of sex workers. We hate those men that go to abuse children or rape women without their consent. With sex workers, it is a fast one. A man who suffers from high Libido will just go to any nearest bar or along the road

where he can meet these service providers. You negotiate on a price, agree and you have a fast one. Life goes on. So why the fuss? Leave sex workers alone. (Hunga)

Another argued that sex workers are not doing anything different from the rest of society in terms of sexual behavior: “every[one] is a Prostitute wat differs are levels of Prostitution.” (Tioz). Therefore, the general sentiment shared by supporters was that sex workers’ role was necessary and that they were an integral part of the functioning of society. These sentiments are consistent with those of liberal feminists who argue that sex work is necessary for decreasing the amount of “sexual misery” in society (Beran 2012:34). Therefore, they contend that there is nothing inherently wrong with sex work and that it is society’s attitudes and policies that must change.

Most readers agreed with the ruling and legal rights of sex workers in discussion of this topic. They noted that given the events of the case, sex workers had legal rights and those rights had been violated. For example, “Sex workers have rights just like you and me and they need the protection of the courts. This is a victory for human rights and equality before the law” (Kelvin). Supporters tended to praise the justice system and Justice Ntaba who oversaw the case in the High Court: “Judge wamzeru uyu kobasi.... Ma judge otelewa amasowa lol [“The judge is very brilliant... These kinds of judges are scarce lol”]” (DJ OK). In contrast, some opposed the ruling, considering sex work as illegal or alternatively understanding it to be legal but expressing a desire for it to be illegal. As a result, they questioned the ruling, the justice system, and Justice Ntaba. Her qualification, experience, authority, educational level, ethics and overall competency came under scrutiny, as in this comment: “Malawi’s justice system has a very huge structural problem. Not only are its magistrates egregiously incompetent but the laws are also applied dishonestly and inconsistently. Its just chaos!” (The Analyst). They suggested that the judge was coopted by NGOs or their human rights agenda. To them, human rights advocates were overreaching, out of control, and placed no boundaries on freedom. For example: “apandye ndmwana emwe umpeza wapana kumufunsa akuwuzza kt alindfulu wake opanga izimenezo shaaa dziko laipa iri [“If you are to find a small kid with a sex worker, he can tell you that it’s his right, the country has gone bad”]” (Benjamin). This led a few readers to question the relevance of NGOs and democracy in Malawi, whilst a few others lamented the powerlessness of Malawi in relation to NGOs. Human rights were not only blamed for propping up bad laws, but also other behavior regarded as deviant such as adultery, homosexuality, and abortion. As in this comment “Blind Human Rights Activists who can not distinguish between Human Rights and Inhuman

Rights!!! ...currently leading the world astray blindly!...dear folks! expect a fall into a rubbish pit anytime soon. How can prostitution/adultery, sodomy or abortion be categorized as human rights???" (Vivian).

Some pro-sex work advocates, though, argued that NGOs were useful for securing the rights of all citizens and could assist in monitoring rogue police units. They highlighted that sex workers were perpetual victims of the police and faulted the police for their transgressions. In a thread about the police one frustrated reader asks, "so u mean the rogue unit must harras, smack and just keep quiet and let it go just like that. Why cant they stop and ask in a professional way" (Michael)? He further contends that the police behave like they are above the law through their continual tendency to abuse power through raids and flaunting laws such as *vakabu* - Rogue and Vagabond laws. He adds, "U stop a citizen and ask few questions. If u are not ok then u remand the person for further investigation. But it not ok to just go wild and load pple without questioning. That what we want those human [rights] groups to look into again" (Michael). Several readers regarded the police as problematic because of the *vakabu* laws. A few readers had been harassed by police based on these laws. The issue of women being arrested in public spaces by the police was also a contentious issue. A few commentators thought it was unfair that women were arrested whilst their male clients were not; they regarded it as gender-based discrimination. One reader added that police activities were an extension of President Kamuzu Banda's dictatorship: "Malawi is the only backward country where the police storm into bars harrassing women. Chintima cha Kongresi sichinathe ["The ideas of the Malawi Congress Party have not finished"]" (KKilemba).

Readers acknowledged the discrimination sex workers faced at the hands of the police and in the criminal justice system. However, the marginalization, discrimination and stigmatization sex workers face in other areas of their lives were seldom mentioned. Some readers mentioned such abuse and violence by the police, although clients – including foreign tourists – were identified in a few posts as abusers. In at least two posts, readers actively made threats to rape, abuse or kill sex workers. The dimensions of sex workers' lives that were more frequently mentioned were those concerning their livelihood and financial well-being. Supporters argued that this was the only way they could make a living. One reader argued that arresting sex workers would be a burden on their families because they often supported family members. Opposing readers frequently associated sex workers with carrying disease,

disregarding Christianity and being atheist, blaming them for their own misfortune; for example, “sex workers does not believe in God. The Bible says ‘Seek God kingdom and his righteousness and all these things (food, shelter, clothing etc) shall be added unto u” (Igabel of Harties).

Other issues raised in the comments included the impact sex work had on public health, the illicit nature of the trade, the ruling being linked to government corruption, and gender discrimination.

Readers typically referred to sex workers using the pejorative terms “whore” and “*hule*” which were collectively used 49 times compared to “sex work,” which was used 20 times, and “prostitute,” used 23 times. The term “whore” was used even when comments were supporting the ruling or their right to work, indicating that stigmatization and marginalization of sex workers in Malawian society continues to be pervasive.

#### *Attitudes towards Sex Work and Sex Workers in Tourism*

Malawian journalists largely showed their professionalism with regard to the coverage of the case in the news sources because they did not misrepresent sex workers or rely on sensationalist headlines. Often news headlines and content about sex work worldwide emphasize salaciousness or lewdness rather than the pertinent issues (Nyembe et al. 2014). In journalists’ coverage of the Pempho Banda case, though, sex work was framed as a legal right, a human right, with sex workers being considered as casualties of poverty and victims of police abuse. The reaction from some of the public, though, differed. The narratives about the case in the articles and those expressed through the social attitudes and public opinions in the commentary reveal several dynamics about sex work in Malawi’s hospitality and tourism sector. They reveal that sex work is largely seen by the public as a social problem, that is, a condition that undermines the well-being of some or all members of society that they would like changed (Henslin 2014, Maconis 2015). Socio-cultural attitudes towards sex work were largely negative, which presents challenges for advocating policies that benefit sex workers. However, nearly half of the comments were also either pro-sex work or neutral, indicating that there is the possibility that these readers can be more receptive to the friendly sex worker policies - including decriminalizing laws that target them. By unpacking the social, political and economic context in which the comments are made – particularly the negative comments - we can better understand social attitudes, and subsequently the larger public opinions toward sex work and sex worker.

Sex work was also seen as morally problematic by much of the public. Regardless whether commenting readers were pro-sex work or anti-sex work, their discourse surrounding sex work in Malawi was largely grounded in religious worldviews, in contrast to the articles that steered clear of moral judgments and religious connotations. The influence of Christianity in Malawi is strong. During the colonial period, Malawi was a part of the federation including Zambia and Zimbabwe. Malawi was used as a source of labor to these settler nations and was consequently underdeveloped relative to them. Consequently, Christian missions, churches, and schools filled that gap, laying a particularly strong foundation for the religious conservatism which exists today (McCracken 2012). An overwhelming number of online comments were religious or had religious undertones and were based on the premise that sex work was a sin. Although some used religion, often making references to religious parables to defend sex workers, the vast majority of comments used religious moralistic arguments to justify their marginalization. Many of these readers considered the ruling as a signifier of evil penetrating into society and referenced fatalistic parables. For example, “Sodomu ndi Gomora akuchepera ndi pamene wafika Malawi Lero [“Sodom and Gomorrah fall short relative to what has befallen Malawi today”]” (Bartolomeu). Another reader’s reaction was as follows: “Unyang'anya awaits u sodom a' gomora [“This story is just too much, sodom and Gomora await you”]” (Lewis M). The story of Sodom and Gomorah in particular appeared several times. In this story, God destroys the cities because of the prevalence of the rampant “unacceptable human conduct” of homosexuality (Carmichael 2012:104). Referring to this story suggests that some readers felt what befell these cities would befall Malawi because of embracing sex work. This suggests that readers were wary about sex workers’ sexual behavior, possibly in reaction to rising lesbian, gay, bisexual and transgender (LGBT) advocacy in the country.

In 2016, the highly publicized story of Cuthbert Kulemeka and Kelvin Gonani’s arrest brought LGBT rights issues to public attention. In Malawian law, homosexuality is defined as being “against the order of nature” and hence illegal. Therefore, when the two gay men met in a bar, returned to Gonani’s home, and had consensual sex, neighbors began harassing them. They started throwing stones at the house and threatening vigilante justice on them until police intervened, arresting them for violating anti-sodomy laws (Dionne and Dulani 2016, Khamula 2015). Their arrests were met with opposition by local and international human rights NGOs, and they were subsequently released after the intervention of US and German Ambassadors, with the

government issuing a moratorium on enforcement of the anti-sodomy laws, citing human rights concerns. In response, Young Pastors Coalition (YPC) of Malawi successfully sought an injunction against the moratorium in order to have Kulemeka and Gonani re-arrested. The High Court ruled in YPC's favor, stating that arrests of homosexuals were legal until the law was formally repealed (Dionne and Dulani 2016). Therefore, it is not surprising that statements from Catholic Bishop Mtumbuka of Malawi's largest Christian denomination were widely quoted in Malawian newspapers saying that "Malawi was not Sodom and Gommorah" (Khamula 2015). He further reiterated that condemning homosexuality was akin to the Bible's condemnation of "murder, adultery, premarital sex, kidnapping, lying and idolatry" (Khamula 2015). He contended that marriage was between one man and one woman for life and that "sexual activity should be confined to marriage" (Khamula 2015). The latter statement, made two months prior to the arrest of the sex workers in the Pempho Banda case, is of particular relevance to sex workers, who are widely regarded as living outside of Biblical teachings and whose work is "commercialized, non-monogamous, and non-reproductive" (Hunt and Hubbard 2015:27).

The aforementioned case underscores that in Malawi tolerance levels for sexual minorities is weak. However, after the Pempho Banda case, the judge's ruling was not legally challenged, and the rights of sex workers were affirmed, suggesting that tolerance for sex workers is higher than that for the LGBT community. Additionally, a 2015 study by Afrobarometer which included Malawians showed that Africans were generally very tolerant of "people from other ethnic or religious groups, and of immigrants and people living with HIV/AIDS" but not tolerant of homosexuals. This shows that there are exceptions to what sexual behaviors Malawians will tolerate and provides insight why sex workers and *fisis* – even when the *fisi* is a woman - are treated differently. Further research would be needed to determine where sex workers would fit in this spectrum, particularly since they were often blamed for spreading HIV/AIDS (Dulani, Sambo and Dionne 2016).

Politically, the intervention of the NGOs in the case of Gonani and Kulemeka helps us put into context the comments by readers linking sex work to homosexuality or to the hegemony of western NGOs, topics which newspapers tended to avoid. Some readers considered all sexual minorities as signaling a decay in society and hence, problematic; "today whores, prostitutes and adulterers being recognized as (sex) workers! . . . And sodomites too are gays, bestiality; interspecies love-so that humans can enjoy sexual intimacy with their pets and livestock. Pure

madness!!! Our world today is apparently turning upside down” (Vivian). These sexual behaviors were regarded as being encouraged by NGOs who were accused of leading the country away from God in efforts to encourage personal liberties, human rights, and democracy. Some indicated that human rights advocacy had gone too far and should not be extended to all citizens - particularly to sexual minorities. This is consistent with the argument that since female sex workers are unnatural and morally corrupted women, Malawi should withhold from them some privileges such as human rights, which are awarded to “respectable” women (Hunt and Hubbard 2015). Readers opposing sex work faulted both international and local NGOs for spreading their foreign culture to influence the ruling, as in this comment: “Human rights was formed by a certain group of rich people who are the devil followers, they encourage unlawful things and disobey the bible, therefore they dominate the world bkoz they have lots of money, deep down all the organization are supoted by white people from overseas, human rights, united nations, AU, USAID, are some of demonic organisations, we poor people we hav nothing to do and we cant stop them bkoz they are on a driving seat” (Magazino).

Such criticisms are consistent with arguments of post-development critics who highlight that many development projects reflect liberal populist ideas of freedom that are often western-centric, inegalitarian, tyrannical, and exclude the poor, which has led to growing skepticism towards local and international NGOs by the poor in the developing world (Kampoor 2005). Authoritarian populist movements often capitalize on such sentiments by promising to look after the interests of “the people” by stamping out crime, corruption, sexual immorality, and judicial and academic institutions. Populist leaders therefore often target liberal values such as individual rights, gender equality, lifestyle choice, and tolerance of moral diversity and seek to destroy legislatures, judiciaries, the press and NGOs (Colgan and Keohane 2017, Vincent 2011). President Bingu Mutharika attacked many of these values when he began consolidating his power in the name of development during his second term (2009-2012). This included cracking down on individual liberties, LGBT rights, the press, judiciary and NGOs and running against neo-liberal economic development model orthodoxy, all of which caused international NGOs to withdraw aid (Brooks and Loftus 2016, Wroe 2012). Although Mutharika’s policies were largely unpopular, some of his polices - such as snubbing the World Bank and taking a steadfast moral stance against LGBT rights - appealed to citizens who were seeking economic reform and were

socially conservative. Elites with such socially conservative views typically align with radical feminists to promote abolitionism of sex work through faith-based organizations (Weitzer 2006).

Given that Malawi is a socially conservative donor dependent country, the perception that donors are imposing their values has routinely caused tension (McNamara 2014). This is heightened because, due to the country's poverty levels, by 2016 Malawi had 900 NGOs (500 of which were registered), and most of these were international or funded by foreign organizations (Khamula 2016). This high number of NGOs makes them and their influence on policy and political agenda-setting - especially with regards to legal and human rights – highly visible. Therefore, when it came to the Pempho Banda ruling, opponents tended to regard both the government and NGOs with suspicion and skepticism. They accused the NGOs of having undue influence on the Pempho Banda court case, actors in the criminal justice system, politicians and the political elite. The criminal justice actors and the elite, in turn, were accused of looking after their own interests. This is somewhat consistent with arguments by scholars that Malawian elite often align themselves with the interests of foreign NGOs, generally providing legitimacy to neo-liberal forms of governance (Brooks and Loftus 2016, Page 2019). Some readers alluded to such ties, condemning Justice Ntaba's ruling for aligning with the interests of the elite, although a ruling in favor of sex workers also aligns her with the marginalized poor who have trouble accessing justice in Malawi (Gloppen and Kanyongolo 2007, Page 2019). Similarly, these readers discussed corruption, bribery and criminal behavior in the ruling and the wider government, thereby linking sex work to criminal activity in government. Some castigated the current government; one expressed nostalgic sentiments towards the rule of Kamuzu Banda, wherein corruption was consolidated and contained (Booth et al. 2006). Although these readers regarded government as a co-conspirator, coverage of the case by government owned Malawi News Agency and Malawi Broadcasting Corporation was noticeably absent.

The debates about sex work in Malawi provide a window into larger divisions in Malawian political culture and the difficulty in trying to place Malawian political ideologies into the commonplace liberal versus conservative spectrum. The terminology of “left vs. right” or “liberal vs. conservative” in Western political ideology is problematic in the Malawian setting (Logan and Bratton 2006). First, this terminology is not common in discussions about political ideology in Africa, therefore readers do not refer to themselves - or anyone else - in reference to them. Second, political parties have weak policy manifestos and strong leaders, which poses

challenges to policy-based politics. Simply speaking, the lines between “liberals” and “conservatives” in the African context are blurred. For example, African states have traditionally intervened in the economy by controlling prices and owning vast industries. Additionally, leaders that embraced neo-liberal capitalism such as Kamuzu Banda have often provided some safety nets and state services although these have never become well established in Africa (Booth et al. 2006, Logan and Bratton 2006). In this context, then, being an African “liberal” in fact, means being “pro-change” and supporting what are regarded as conservative policies (i.e. neo-liberal policies such as minimal of state intervention in the economy). Conversely, being an African “conservative” means being “anti-reform” or in support of the status quo and essentially what is regarded as a liberal policy agenda in Western countries (i.e. state intervention and safety nets) (Logan and Bratton 2006). It should follow then that categorizing feminist debates on sex work into the two broad categories of “liberal” versus “radical” in the African context poses similar challenges (Weitzer 2005).

In the economic context, readers opposed to sex work blamed sexual minorities for larger problems in society – including causing or contributing to poverty. Although supporters argued that sex workers paid taxes and made their own living, opponents regarded them as a burden to the economy. They were blamed for being a distraction to the government’s focus on creating income generating activities and jobs. They were also regarded as being an obstacle to economic development because they were using up government resources and time that could be spent on legitimate development projects such as access to water, electricity, education and - for one reader - the cultivation of marijuana. Sex workers were also blamed for contributing to other socio-economic problems such as population growth, birthing AIDS orphans, and spreading HIV/AIDS. Opponents also accused them of depleting resources such as antiretroviral medications. The tendency to view them solely as vectors of disease responsible for HIV/AIDS is problematic because doing so obstructs preventing the spread of HIV/AIDS; typically, HIV/AIDS in Malawi is transmitted heterosexually, often within marriages. Such stigmatization persists, particularly by medical professionals or public officials. In 2017, a public official accused sex workers of depleting treatment for sexually transmitted infections, thereby worsening stigma they already face accessing healthcare (CSJ 2017, Forster 2000, Mkandawire-Valhmu et al. 2013). The tendency for opponents to blame sex workers for living parasitically off the government for accessing such services deflects readers’ attention from discussing the

failures of the government in providing safety-nets for sex workers. Furthermore, it overshadows discussions about the failures of neo-liberal development policies in providing for the poor, which are important to address because they create the conditions that force sex workers into the sex trade. Neo-liberal policy failures also leave sex workers vulnerable to being targeted by populist leaders who tend to exploit sexual minorities as being antithetical to national values (Vincent 2011).

Whilst opponents largely considered sex work in the local context, some considered the practice as a part of the global sex trade industry. They referred to it as a manifestation of western hegemony and accused NGOs of encouraging sex work because their staff were engaging sex workers' services. Beyond the references to foreign NGO staff as clients, the only other country which was identified as an international source of clients was Somalia. Presumably, this is a reference to illegal migrants from Somalia who settle in Malawi or were en route to South Africa (Khamula 2017). Otherwise, few comments linked sex workers' clients to a specific country or the global tourism industry. One reader did identify clients as quite varied: "The girls advertise themselves to travelers or tourist. They meet for first time and exchange interests . . . The obvious customers are actually men who have money from unknown sources. Tourists, travellers, fake workshop frequenters, joneyy Nnashes, town stars, taxi drivers and their customers" (Madimbo). These demographics are consistent with those identified in studies such as Chizimba and Malera (2011).

Readers on both sides of the sex work debates referred to the disruptive behavior of the police in public spaces – particularly to the practice of raiding rest houses and entertainment places. They felt that the police should not harass sex workers, clients or both. The general consensus on both sides was that the police abused laws such as the *vakabu*, with some calling for its abolishment. Some reiterated that law enforcement's harassment of sex workers was a matter of gender discrimination and that women should be allowed to be in any business establishment without fear of being arrested. Others further argued that sex workers shouldn't be arrested because they were working, and police were preventing them from earning a living. However, there were mixed reactions by readers about whether sex work was in fact work – many readers lamenting over the use of the terminology. A few readers quipped about the lack of educational qualifications for the job, whilst others noted that there was need for regulation,

particularly taxation as in any other business. This suggests that there may be more general support for the greater regulation of sex work.

This chapter has focused on the dominant narratives from digital media about the Pempho Banda case. The findings revealed that in spite of balanced framing by the digital newspapers, public opinions were mostly negative. However, user generated online comments tend to attract extreme and negative reactions, which is a limitation of such research. Malawian digital media became a space where people aired their spectrum of attitudes towards sex work and sex workers. The negative comments representing a variety of challenges that sex workers advocates, policymakers and feminists face when advocating for sex workers – including decriminalization. Although this online space was dominated by anti-sex work sentiments, it was also a space where pro-sex work advocates could express their opinions. Additionally, several people making neutral comments or observations might have been open to better policies for sex workers. In addition to people expressing their opinions, they were also educating each other, clarifying information, and sometimes coming to a consensus – for example, on the role of the police in the lives of sex workers and ordinary citizens. This shows that social media in Malawi has become a platform where sensitive topics about legal issues and public policy can be debated, negotiated and formed. Understanding the social attitudes as well as the social, political and economic environment which shapes them, usually informs the possibilities for decriminalizing laws targeting sex workers.

## CHAPTER 4. TORTS, TARTS & TESTIMONIES: LAW, MEDIA AND ADVOCACY

### *Introduction*

This chapter examines how the narratives about the Pempho Banda case in the mass media compared with those of actors in the criminal justice system. The connections between these narratives have practical significance for efforts to defend or expand rights for sex workers in Malawi. Strategic litigation cases such as Pempho Banda et al. are most successful for the petitioners and advocates when the mass media complements the work of advocacy groups, informing and shaping public opinions about similar cases in the future. The chapter makes use of qualitative data from English-language digital newspaper articles about the Pempho Banda case and related user generated comments, as well as interviews with relevant actors in the criminal justice system. The data will be analyzed using relational content analysis of the gathered information.

The narrative of the Pempho Banda et al. case was largely framed in the media as a victory for human rights and legal rights. News articles encouraged sympathy for sex workers by representing them as deserving and as victims of human rights abuses. Human rights advocates framed the narrative as triumphant as well. Their goal was to derive support for the constitutional rights of sex workers from a legal standpoint. Therefore, the narrative of journalists and pro-sex work human rights advocates seemingly complemented one another; in practice, this is the most effective outcome in a strategic litigation case (OSJI 2018). In contrast, the public response, as gauged by readers' online comments on news medias' websites and on social media, seemed to be largely anti-sex work. Several readers expressed shock, dismay, sadness and fatalistic sentiments about the ruling. Many members of the general public presented sex work and sex workers in a negative manner. However, I contend that using strategic litigation was still important in bringing to the public domain converging and diverging perspectives on sex work; this includes intersectional feminism, liberal feminism, anti-colonialism, and critiques of global capitalism and human rights activism.

### *Overview of Mass Media and Legal Advocacy*

The goal of the advocates in the Pempho Banda et al. case was to challenge the laws, policies, and practices surrounding sex work using the case of the 19 prosecuted sex workers through litigation. Litigation is the process of taking legal cases through the court system.

Strategic interest litigation refers to a case that has broader social goals as its main purpose, particularly those redressing structured inequalities in society based on class, gender, race, sexual orientation and other power relations (Ezer and Patel 2018, Gloppen 2005, Young 2016). Since it focuses on cases that benefit the public, it is often used interchangeably with the terms “public interest litigation” or “human rights litigation” or other similar terms (OSJI 2018). Lawyer and legal scholar Abram Chayes defines public interest litigation in general terms as the practice of lawyers “seeking to precipitate social change through court ordered decisions that reform legal rules, enforce existing laws, [or] articulate public norms” (Chayes 1976, Nkhata 2008). For the purposes of this chapter, the working definition for “strategic human rights litigation” used by the Open Society Justice Initiative (OSJI) will be used. This defines strategic litigation as “legal action in a court that is consciously aimed at achieving rights-related changes in law, policy, practice, and/or public awareness above and beyond relief for the named plaintiff(s)” (OSJI 2018).

Although successful strategic litigation helps a particular client, it has broader implications for the larger society through its use of test cases. These test cases are used in order to enforce, affirm, clarify, challenge, reform or build on laws and policies that can then inform subsequent cases in the criminal justice system. Thus, they set legal precedents to ensure the rights of others in similar situations. They also test the capacity of the judiciary and other institutions in a country for delivering justice, thereby strengthening the legal system for the good of society (Gloppen 2005, Nkhata 2008). As such, advocates regard strategic litigation cases as an avenue through which “the voice of the marginalized can be articulated into the legal-political system and as a mechanism to make the state more responsive and accountable to their rights” (Gloppen 2005:2). Most such cases involve partnerships between different groups with common interests, such as a coalition of grassroots organizations working with victims, national interest groups focused on particular issues, and organizations with legal experience in other public interest cases (Young 2016).

There are two explanations often given to explain whether individuals or interest groups will use strategic litigation for policy change. The first explanation, institutional accessibility theory, contends that that the degree of institutional accessibility to courts affects whether or not groups will use strategic litigation. A commonly used indicator determining accessibility involves examining the existing rules of *locus standi*: legal standing to sue or title to sue

(Krishnan 2001, Nkhata 2008), that is, the right of an individual or group of individuals to bring an action to the court for the purposes of the court deliberating on it (Nkhata 2008). *Locus standi* is closely related to the right of access to justice because judges and/or jurisdictions determine if they will use a restrictive or liberal approach when accepting a case. When deploying the liberal approach, courts are more amenable to granting standing to a wider set of litigants. When using a restrictive one, courts narrow the range of allowed litigants. Thereby, the more liberal the interpretation, the greater the number of cases will be heard in the court, and subsequently the greater the level of access to justice will be (Krishnan 2001, Nkhata 2008). The second explanation, resource-based theory, argues that it is group-resources that primarily determine whether an organization uses strategic litigation due to the costs associated with the litigation process. There are other factors that may also influence this decision that are contingent on the specific country (Krishnan 2001).

There are typically three stages in a strategic litigation process used to build a persuasive case: case development, court action (hearings, trial and deliberation up to ruling) and post-judgment. These stages involve careful planning and consideration; however, many external factors such as “which judge is assigned the case, the timing of relevant political events, [and] the availability and admissibility of persuasive evidence” impact this litigation process, making it somewhat unpredictable (OSJI 2018:74). This chapter is most concerned with the post-judgment stage, which is characterized by “efforts to secure implementation of all or parts of the judgment, including community mobilization (for or against the ruling), media coverage, psychological adjustment, and either appeals or additional, related filings,” because of this study’s interest in mass media coverage during the Pempho Banda case. However, it is important to highlight that mass media were engaged during other phases of the case as well.

Mass media coverage is a core part of strategic litigation cases. Media’s involvement is a core part of strategic litigation because of the media’s power to identify and shape issues of concern to the public. Media advocacy in particular helps the socio-legal condition of marginalized groups become a part of public record because their socio-legal environment become “documented.” According to legal scholars Michael McCann and William Haltom, “law itself, as a form of constitutive knowledge, is significantly produced and reproduced by the narratives circulated by print and electronic news” (Haltom and McCann 2004:2). Thereby, the legal narratives provide legitimacy to the stories of the marginalized as fact and as a part of the

historical narrative. They also translate those legal issues into terms more accessible to the general population, thereby giving mass media the ability to influence public discourse and making it a core part of the third phase of strategic litigation (Ezer and Patel 2018, Perse 2000).

Framing by the media influences public opinion because the media highlights or defines causal attributions and moral evaluations, and it implies policy directions. This may impact public reactions and how the public interprets the issues in the case (Matthes 2010). Online digital media has become a space where controversial and topical issues are debated and negotiated by the general public. One way to monitor public opinions is through the public's engagement with news stories online about the case through the comments they leave online. Online commentary helps gauge public reactions through the level of engagement with the story. Analyzing the commentary that is made on online platforms provides insight on public opinion. Such significant mass media bolstering of strategic litigation leads advocates to consciously package legal knowledge and narratives for the press. Advocates often seek to engage mass media by building relationships with journalists, issuing press releases, placing opinion pieces in papers and using digital media to keep the public abreast of the main issues in a strategic litigation case (Ezer and Patel 2018:154, Haltom and McCann 2004).

In the Malawian context, strategic litigation is relevant for marginalized populations who otherwise may not have access to justice. Although it is quite common for elite Malawians to seek legal redress through civil or criminal case litigation, public interest litigation cases occur less often. However, advocates in Malawi are increasingly using strategic litigation cases to affect policies because it is an effective technique to achieve policy changes for social issues, particularly when the litigants are poor, vulnerable marginalized populations such as sex workers (Gloppen and Kanyongolo 2007). Malawi's strong constitutional basis for social rights litigation combined with its robust, independent judiciary means the conditions for public interest litigation cases in the country are seemingly favorable. However, these cases have not been common for several reasons. One primary reason, based on resource-based theory, is the resources it takes to litigate, which includes financial costs or legal expertise for groups without legal representation. Another primary reason is how Malawian judges interpret *locus standi*. Malawian laws state that parties need to have a direct interest in the case in order to have a right to have their case heard. Malawian judges have tended to take a restrictive approach in making their decisions on whether or not cases get heard. They typically maintain narrow criteria and

often dismiss public interest litigation and decline jurisdiction on social rights (Gloppen 2005, Krishnan 2001, Nkhata 2008).

In addition to these two common explanations – resources and institutional access – Gloppen and Kanyongolo (2007) identify other practical, formal and motivational reasons that hinder access to courts by marginalized individuals or groups in Malawi. These include practical and formal barriers such as inadequate court resources, inadequate justice sector personnel, and a shortage of courts. It also includes motivational barriers such as fear and suspicion of the legal system, particularly the courts and the police (Gloppen and Kanyongolo 2007). Such barriers block the majority of Malawi’s population from access to justice without intervention by more privileged allies. Given new levels of support and trust in the litigation process, more local NGOs have had the resources to pursue this route (Gloppen 2005).

There have been some gains made by sex workers in recent years that have helped them make inroads in securing and affirming their rights in the criminal justice system. Strategic litigation is often a long process due to the number of abuses marginalized groups face and because obtaining one ruling commonly requires getting another ruling to pave the way for it. While a single case can advance or set back human rights jurisprudence in a lasting way, a strategy of filing multiple or incremental cases can be more effective in bringing change (OSJI 2018). An incremental approach is also most effective for asserting the rights of marginalized groups. In Malawi, organizations that were interested in decriminalizing laws targeting sex workers have used this approach to gradually gain rights for them. The first case was that of the “Mwanza 11” where sex workers were arrested during a police raid in 2009 and were subjected to forced HIV/AIDS testing. They appealed their case with the help of SALC and OSISA. The 2015 ruling from their appeal was that the government violated their constitutional rights by forcing these tests on them, thereby affirming that sex workers had constitutional rights (Ezer and Patel 2018, Moshenberg 2015). The Pempho Banda et al. case which challenged the offense of living on the earnings of prostitution came a year later with the help of SALC and CHREAA. Justice Ntaba’s ruling in this case clarified that sex work was not illegal and affirmed their constitutional rights to due process. Therefore, it was unsurprising that when street vendor Mayeso Gwanda was arrested a year later, SALC and CHREAA assisted him in challenging the Rogue and Vagabond laws which were used to harass vendors, sex workers, and other marginalized groups. In 2017, the High Court ruled that the rogue and vagabond laws were

unconstitutional. These three rulings, which affirmed the rights of sex workers, left a foundation from which challenges to laws criminalizing sex work can be initiated as part of a larger goal of advancing rights for sex workers (Banda and Meerkotter 2015, Ezer and Patel 2018, SALC 2016).

These gains for sex workers have manifested in the wake of gains by other sexual minorities. Notably, strategic litigation was used in a 2012 case involving Steven Monjeza Soko and Tiwonge Chimbalanga Kachepa, a man and transgender woman seeking a same-sex marriage, whose story came to the public attention when newspapers reported that they had performed a traditional wedding engagement in 2010. They were sentenced to 14 years in prison with hard labor. During their case, the Centre for Development of People (CEDEP) and CHRR used litigation strategies to gain rights for them through the High Court. However, they were unsuccessful in moving their case to a Higher Court to affirm their rights. The couple was pardoned by President Bingu wa Mutharika during an intervention by UN Secretary General Ban Ki Moon during a state visit to Malawi (Demone 2016, Dionne and Dulani 2016, McNamara 2014). Even though the litigants ended up in jail and were psychologically affected due to the negative outcome, the LGBT community and other sexual minorities made gains through this case. The advocacy and intense media coverage of the case assisted in highlighting the misfortunes of individuals under prevailing laws; the need for change; and the failure of the legal status quo. It also strengthened the LGBT movement in Malawi and increased public discussion of LGBT rights and other sexual minorities. Such litigation losses pave the way for justice or policy changes in subsequent cases dealing with sexual minority rights. As an example, when the subject of LGBT rights resurfaced in 2015, in the case of gay couple Cuthbert Kulemeko and Kelvin Gonani, this case was also subsequently dropped, albeit due to an intervention (Dionne and Dulani 2016, Ezer and Patel 2018, McNamara 2014, Open Society Justice Initiative 2018). Both cases which preceded the Pempho Banda et al. case tested the state's stance on homosexuality. Although they led to negative outcomes and backlash from the public, they resulted in progress for sexual minorities and sex workers. The High Court's decision to launch proceedings to deliberate laws related to homosexuality in 2013 suggested to advocates and legal scholars that targeted, conscious repeated advocacy efforts such as strategic litigation have been having some impact in Malawian law that has not previously occurred within the justice system (Demone 2016, Price 2010). This suggests that in spite of any negative public opinions or future

negative outcomes, the preceding cases that secured rights for sex workers can still be considered a victory and part of a broader goal.

Strategic litigation and the news media complement one another in struggles to advance human rights. In fact, strategic litigation is most effective when the media is engaged. Studies have documented the role of the media in shaping public understanding of crime and the criminal justice system. However, scholars such as Haltom and McCann (2004) suggest that more attention is paid to the quantity of the media attention which public litigation cases receive and not enough to the quality or substantive content. They argue that there is much less literature on how rulings in appeals courts are covered in the press as an indicator of impact as well as the role of the mass media in substantively shaping “the character, scope, and terms of specific reform litigation campaigns” (Haltom and McCann 2004:2). In Malawi in particular, there are few studies about the interplay of legal advocacy, sex work and mass media for sexual minorities and sex workers. However, understanding the content of the media narrative is important because news media contributes to the construction of public interest litigation case narratives and the goals of the advocates in the criminal justice system (Haltom and McCann 2004). This helps to represent sex workers in a more favorable light to the public, which is particularly important since strategic litigation impact studies suggest that the reputation of advocates and victims tends to be tarnished by public backlash (OSJI 2018). This chapter unpacks the representation and presentation of sex work and sex workers. It aims to understand the principle issues and messages conveyed from the actors in the criminal justice system, mass media and the corresponding public comments responding to them. As such, the chapter is guided by the third research question:

*How do mass media representations about sex work, such as online news articles, and public comments responding to them, compare to the testimonies and perspectives offered by actors in the criminal justice system who played an indirect or direct role in the case?*

### *Methodology*

In order to respond to the question, narratives were gathered from both digital mass media and the actors in the criminal justice system connected to the case. Data from mass media included the narratives from 11 English language digital news sources that wrote about the case. It also included the public reactions as indicated in the corresponding commentary section of the

newspaper's website or social networking site. This allowed the study to draw out the themes, messages conveyed, and representations about sex workers from human communication from digital media and court records for analysis. It also allowed the study to gauge the opinions of the elite, who are the policymakers. The comments on the website were compiled, filtered for spam, and translated in the case of comments written in Chichewa or Chitumbuka (Babbie 2010, Kim et al. 2016, Sohrabi and Karimi 2018). The data from actors in the criminal justice system was gathered using triangulation from three sources including court documents, news statements and in-depth interviews from the actors in the criminal justice system connected to the case. Interviews with the actors in the criminal justice system consisted of people directly or indirectly connected to the case such as advocates, lawyers, judges or journalists. They were conducted for 40 – 60 minutes over the phone using digital telecommunications software and transcribed.

All data was analyzed with digital coding software MAXQDA. The data separated into three main groups which included a news source group, interview group, and pop document group. Coding aimed at identifying patterns and common coding categories. Coding categories were both inductive and deductive. The deductive codes were based on the CASAM (2007) study of newspaper presentations of sex workers in India. The remainder of the coding categories were derived from text documents gathered from all three groups (CASAM 2017, Babbie 2010). The relational approach to content analysis was used and therefore, the analysis sought to draw out the relationship between coded themes and words. It also aimed at highlighting the presentation and representations of sex work and sex workers (Carley 1990).

### *Mass Media Representations and Narratives of Actors in the Criminal Justice System*

Challenging the law through strategic litigation in the Pemphe Banda et al. case was the joint effort of several actors in Malawi's criminal justice system who worked in partnership to affirm rights for Malawian sex workers. As an association of sex workers, FSWA opposes human rights abuses, criminalization of sex work and other legal barriers for sex workers (NSWP 2017). As is the case with many interest groups, FSWA did not have the legal expertise nor the financial resources to litigate on their own to support the nineteen sex workers whose rights were violated. They partnered with the local organization CHREAA, whose interest is "promotion and protection of human rights" and "making justice accessible to marginalized communities" for assistance (CHREAA 2019). CHREAA's role was to provide legal expertise as

a resource as well as financial support with the support of SALC. SALC is a South African based strategic litigation organization that supports human rights cases and works with attorneys on planning petitions. SALC was a suitable partner because their core competency is strategic litigation. Therefore, faced with resource and institutional access as barriers, CHREAA and SALC were able to provide victims in the case and FSWA with greater access to the justice system, which is typically not available in Malawi for marginalized groups (Gloppen and Kanyongolo 2007, Krishnan 2001, Young 2016).

As a strategic litigation organization, SALC – a joint initiative of OSISA and the International Bar Association (IBA) – partners with Malawian lawyers and human rights organizations to shape policy through strategic litigation. Their goal is to advance constitutional rights, human rights, and the general rule of law. Incidentally, they have a strong record of seeking rights for media through media freedom cases. They also work in HIV litigation dealing with discrimination and access to treatment, and they have worked with CHREAA on strategic litigation in the “Mwanza 11” case (LexisNexis 2019, Moshenberg 2015). The Pempho Banda case was an appropriate test case for strategic litigation for all organizations involved because it fit the agendas of all three groups and met these conditions: clarifying the living on earnings of prostitution law would advance the rights of all Malawian sex workers; it had implications for the wider public because it affirmed that every citizen was entitled to due process whether they were an alleged criminal or not; and the 19 sex workers had a direct interest in the case, which is a requirement by the Malawian courts. SALC identifies cases which have the potential to have lasting impact beyond the parties that are impacted in the case. “In terms of strategic litigation, we use the incremental approach. Instead of just challenging these laws for the benefit of sex worker, we aim for cases which challenge the rights for all, not only sex workers” (Esterhuizen interview). SALC typically selects cases that could enhance related advocacy efforts and raise awareness about the issue or provide education on laws, and it prioritizes cases that violate the country’s penal codes, constitution, or international treaty obligations.

In the Pempho Banda case, SALC worked with local lawyers such as CHREAA and Maele to determine the best litigation strategy and to obtain victims’ consent to use that strategy. Their strategic litigation approach was divided into three phases corresponding with the aforementioned phases of case development, court action, and post-judgment (OSJI 2018): “We do this in three stages. The prelitigation stage - this is where we do our research, community

engagement. Then there's the litigation stage which is where we helped draft the information for the case. Then there's the post-litigation stage, this is where we check if the judgment is meaningful and has an impact on people's lives" (Esterhuizen interview). During the post-litigation phase, SALC and CHREAA's media advocacy included printing brochures, creating awareness campaigns, making television ads, and making press releases (Esterhuizen interview). Comparing the messages, testimony, and perspectives presented by the actors in the criminal justice system with those from mass media revealed several patterns.

#### Legal rights and law

As a strategic litigation case, the narrative from advocates in the criminal justice system was largely about legal rights and access to justice for marginalized sex workers who are routinely harassed by the police. "They are victims because the police always target them. So, the court recognizes how vulnerable they are...the judgment actually recognizes the vulnerability and rights of the sex workers" (Chizjozi interview). The advocates' use of a rights-based approach positioned sex workers as vulnerable victims in the criminal justice system who needed legal assistance in securing their rights. The advocates' approach in this case is consistent with liberal feminist perspectives of sex work and pro-sex work advocates in Africa who demand better working conditions for sex workers and want sex workers to organize for their legal rights (Mgbako 2016). The advocates emphasized the procedural irregularities and *dejure* law, with particular attention to clarifying the living on the earnings of prostitution section of the vagabond laws. Their narrative was that winning the case would improve the conditions for all sex workers and other marginalized groups. As such, they regarded the ruling as a victory for the rule of law in society. "We use this case to affirm and to guard rights of all people, regardless of who they are. The rights to dignity was affirmed. The rights to due process was affirmed" (Esterhuizen interview). They also suggested that Malawi needed to change related laws that criminalized sex work. These sentiments, expressed in the press releases of both CHREAA and SALC, are echoed in the framing of the case in mass media.

The narratives from journalists mainly focused on the legal and human rights aspect of the case because some of their information was taken directly from press release statements made available by SALC and CHREAA. As an example, journalist Bright Malenga of *Malawi 24 News* makes direct reference to the statement by highlighting the following:

According to a statement released by the civil society organisations (CSOs), what Dedza fourth magistrate court and the police did was unconstitutional... ‘The judgement of Justice Ziona Ntaba of high court noted it was clear that the arrests of these sex workers were carried out to embarrass and harass them as section 146 of the penal code does not criminalise sex work but seeks to protect sex workers from those who exploit them,’ say the CSOs in the statement. (Malenga 2016a, Malawi 24 News)

In addition to using advocates’ press release statements, journalists relied on Justice Ntaba’s statements from the case judgment, but they used no statements from other government representatives. They also relied on expert opinions from the advocates from SALC, CHREAA and FSWA, including defense lawyer Maele and CHREAA Director Victor Mhango. Journalists consistently gathered information from people with direct knowledge of the legal issues in the case. Consequently, media messages about the main legal issues in the case tended to be accurate and consistent. Most of the statements from the experts reported in the news sources reiterated the same message that the arrest and treatment of sex workers was a violation of their rights. For example, *Capital FM Radio* used the following statement: “[T]he Programmes Manager of CHREAA, Chikondi [Chijozi], observed there are lots of vulnerable groups which are being victimised by the law and called on rights activists to consider representing such groups of people in courts in a bid to promote justice” (Monjeza 2016). This meant that the news coverage also consistently linked the victory of the sex workers to broader rights for other marginalized groups in the country which is one of the goals of strategic litigation.

The presentation of the legal issues in the articles was generally consistent with messages conveyed by the actors in the criminal justice system about the actual procedural irregularities and arguments in the court case, except when it came to decriminalization. Although advocates in the justice system suggested decriminalization as the direction that the country should take, direct mention of the term “decriminalization” was not made in the news articles. Instead decriminalization was alluded to by highlighting press release statements in the news articles and by emphasizing direct quotes from legal experts. For example, lawyers from supporting human rights organizations such as Mtende Msindama, Director of Lawyers Forum for Human Rights, and Timothy Mtambo, Director of CHRR were both quoted in newspapers calling the offense of living on the earnings of prostitution “unconstitutional” (Correspondent 2016, *Maravi Post*); their statements implied that sex work needed to be decriminalized, though the newspaper articles quoting them did not explicitly mention it as a remedy. The articles focused on the legal

issues in the case and related legal challenges sex workers were facing in the criminal justice system.

In short, media coverage of the case was typically framed in a way that encouraged sympathy for sex workers and maintained that justice had been served. This framing suggests that journalists may have been sympathetic towards liberal feminist perspectives on sex work and law. Noticeably absent were statements or expert opinions explaining the position of police officers who were the perpetrators in the case. The reaction from the general public about the legal aspects of the case were varied but less sympathetic than the viewpoints expressed in the news articles. Although some readers reflected liberal feminist perspectives and argued for decriminalization or legalization of sex work, others reflected radical feminist perspectives and argued for its abolishment. The majority who did comment on the legality of sex work opined that it should be illegal. Some of those readers felt that sex work was illegal in spite of the ruling or issues brought up in the articles. Others understood that the ruling affirmed that sex work was legal, but still thought it should be illegal; one reader argued that even if sex workers had not done anything illegal, they should pay for the “crime” of being a sex worker. Other readers’ comments expressed confusion about the legal irregularities and ruling, for example:

I don’t understand the way the appeal has been handled. 1. It is not about catching two people, after all the prostitutes were not caught in the act. It is about who has done what ... clearly stated by law. 2. The issue should not have been about type of magistrate.

[W]hy couldn’t the case just be restarted? (Joka)

Such comments underscore how the vague nature of sex work legislation creates confusion and complicates public discourse about sex work. They also highlight that in spite of the messages conveyed in the articles, the perspectives on sex work from readers were not always consistent with the viewpoints of advocates.

### Law enforcement and police abuses

The practices of law enforcement were of particular concern to the advocates who faulted them for violating the rights of sex workers. “Over 80 percent of sex workers are abused by the police when they arrested under these offences. Some of them, they are gang raped, others they have their money confiscated by the police” (Chizjozi interview). Advocates emphasized how the police abused their power with marginalized groups. “They will arrest you today, keep you for a day, release you ... and most of the time because these people are poor, they don’t see the

illegality in that conduct, they will just be happy that they are out. They wouldn't want to take it up with a court or lodge a complaint with any NGO or any government institution, as long as they are out, they are okay" (Maele interview). In part, advocates attributed such actions to incorrect interpretation of the law by police: "there needs to be evidence, just because a person is a sex worker doesn't mean you don't have rights. You can't arrest sex workers willy-nilly. There is a distinction between a crime and an individual. If I am a sex worker, they can't arrest me because being a sex worker is not a crime - an offense needs to be made" (Esterhuizen interview). Police abuse was also attributed to power relations between the low-ranking police officers and their bosses: "the police officers, well, they are not lawyers... so sometimes, they will work on the orders that they receive from their bosses. So sometimes they will deliberately [ignore] what they know is the law and do something contrary to the law" (Maele interview). Esterhuizen noted that training and building capacity – which is a part of their post-litigation strategy - would assist in this situation. "The fact that it still happens goes to speak to the training of the police" (Esterhuizen interview).

Consistent with the sex worker advocates' claims, the news articles conveyed a narrative of police raids on sex workers as illegal. In the media coverage police largely appeared as perpetrators, with most quoting advocates' or a judge's statements about the arrest. *The Malawi Nation* newspaper noted the following: "Ntaba said after listening to submissions, it was clear that the arrest of the 19 was unconstitutional, biased and was carried out to embarrass and harass them" (Malikwa 2016, *Malawi Nation*). However, news pieces about police sweeping exercises at hospitality locations and bars are not always negative. Some news sources periodically suggest that police officers are heroes for rescuing underage sex workers during sweeping exercises (Police Rescue Five Girls from Sex Trade 2018). This may help to explain why some readers' comments about the Pempho Banda case were supportive of police sweeping exercises. Other than a few dissenting readers, there was a general consensus that police officers' abuse of power was problematic; police were largely vilified for routinely conducting sweeping exercises and harassing citizens through the *vakabu* laws.

### Morals and moral panic

Sex work is presented as a social problem by the advocates and the media to the extent that sex workers are marginalized and discriminated against in the criminal justice system. The

activists do not make any moral judgments on whether being a sex worker is right or wrong. Rather, morality is incorporated into the idea of human rights, which is regarded by scholars such as Choondassery (2017) as a moral ideal with both political and legal implications. The moral framework of human rights portrays human equality as rooted in the inherent dignity and value of the human person. One advocate interviewed applied this principle to the Malawian sex workers: “just because it’s [assumed to be] criminalized doesn’t mean people should be treated without respect and dignity” (Esterhuizen interview). The right to dignity is regarded by multilateral organizations, NGOs, and human rights advocates as an inherent, universal, inclusive and progressive right. Therefore, legal interventions aimed at providing marginalized individuals with these rights often rely on a narrative of human rights centered on ideas of progress, development and democracy (Choondassery 2017, O’Manique 1990). Human rights scholars such as O’Manique (1990) argue that the concept of dignity is not tangible and argue that human rights can only be meaningful when it is founded on individual and community survival. Therefore, human rights’ approaches are often also grounded in the idea of encouraging and struggling for social justice. Most human rights approaches presuppose that there is a moral responsibility for society to intervene to alleviate human suffering for all individuals in society. Human rights advocates regard rights as essential for protecting individuals from the state. The political responsibility of state actors is thereby to respect or facilitate human and civil rights; particularly when those rights are the basis of the constitution (Becker 2017, Choondassery 2017, Escobar 1997). As such, human rights were a central aspect of this case. “The ruling does actually go more into the technical issues [which are] the legal aspects - before I delve in to the issues of human rights because I understood that the human rights aspect [indeed] was fundamental in the case” (Ntaba interview). Justice Ntaba also mentions that Malawi’s constitution is founded on human rights which includes the right to be treated with dignity, earn a livelihood, earn an income, and otherwise develop as an individual.

The media, prompted by advocates’ narratives, also presented sex work as a social problem linked to legal and human rights. Their moral framing of the case revolves around a narrative of authorities (police) persecuting poor, marginalized women who enter the trade out of economic necessity; for example: “Authorities in Malawi were blamed for perpetrating various abuses...some legal analysts said the continued arrest of sex workers over alleged involvement in prostitution was not backed by law” (Correspondent 2017, *CSJ News*). The same article adds

that, “The case of bar girls in Malawi’s major cities’ concluded that young women who became bar girls did so out of economic necessity....” (Correspondent 2017, *CSJ News*). Other news reports also used the narrative that sex workers are rural women who enter the trade due to poverty and “economic necessity” but are further victimized by the justice system (Ligokeka 2016, *Malawi News Now*). This narrative encourages readers’ sympathy for the sex workers and complements the testimonies of the advocates who identify sex workers as a vulnerable population who are victimized by the police. It also identifies sex workers as the subjects of intervention which is necessary for human rights approaches to work, particularly human rights approaches that focus on achieving rights to make survival itself possible (Choondassery 2017, Escobar 1997). Since the news media narrative was grounded in human rights approaches, it was free from the religious values which dominated comments about these news articles examined in the previous chapter.

Many public comments, whether pro-sex work or anti-sex work, viewed moral issues through a religious lens. As mentioned in the previous chapter, contemporary religious conservatism in Malawi is both a product of the role of churches in founding the country and of the religious conservatism during the Banda era. Many of the comments were negative and fatalistic in tone. These insinuated or mentioned that there was moral decay in Malawian society because of the increase of sex workers, expressing a sense of moral panic. Comments such as “signs of end time, Lord have mercy!” (Munyane) attest to such sentiments. Some comments blamed western NGOs for the presence of sex workers as well as the human rights agenda which readers thought was permissive and against Christian values. However, scholars such as O’Manique (1990) highlight that the modern concept of human rights are rooted in theories about natural law and divine rights which are were perceived as God given values. Readers did not view human rights as being grounded in Christian values through. This is consistent with Harri Englund’s arguments that “human rights talk” enforces an understanding of human dignity which causes some Malawians to perceive it as part of a wider imperialistic agenda by the Global North to gain higher moral ground over Malawi (Englund 2000:580). He argues that the influence of the international human rights agenda marginalizes other ways of perceiving human dignity and rights (Englund 2000). This is consistent with scholars such as Agozino (2014) who argue that individual and group rights existed in Africa prior to colonialism which respected the rights of women and the poor alike. It follows then that evoking indigenous forms of human dignity and

value may advance a rights-based claim for sex workers to Malawians who are skeptical of the human rights agenda of NGOs.

Ironically, western Christian NGOs are partially responsible for negating human rights through policies that encourage increased policing of sex workers. Christian conservatism has been growing in African countries such as Malawi since the 1990s. US faith-based NGOs have been influencing policymakers and local clergy to stiffen policies and legislation against sex workers and against activists supporting them (Horn 2010, Loewenstein 2015, Weitzer 2006). Many of the faith-based NGOs are funded the US government President's Emergency Plan for AIDS Relief (PEPFAR) which includes an anti-sex work pledge which targets sex workers' rights worldwide. The anti-sex work pledge stipulates that foreign based organizations receiving money directly from the US government should sign a pledge to adopt policies opposing prostitution (Kerrigan et al. 2015). PEPFAR focuses on countries with severe AIDS epidemics – such as donor-dependent Malawi – and is affecting services and policies toward sex workers (NSWP 2011, Mgbako 2016). Weitzer (2006) argues that there is a worldwide “moral crusade” waged by an alliance of the Christian right and radical feminists who have the common goal of seeing prostitution banished – that religious conservatives see sex work as a symbol of “sexual liberalism, moral decay, and the breakdown of families” (33), whereas radical feminists think that sex work is oppressive to women. This Christian right influence is particularly important for Malawi because Malawian churches have a history of intervening in the politics of democracy and human rights at critical moments in the country's political history. Therefore, interrogating religious institutions is essential to understand public debates on morality and politics in Malawi. At the national level, churches have commonly worked to protect democracy and human rights, as when they played critical roles in triggering protests against President Kamuzu Banda and in blocking President Muluzi's attempts at a third term. Churches can make such impacts partly because they can reach ordinary Malawians as well as the political elite who influence policy (Englund 2000, Loewenstein 2015, Ross 2004, Simao 2007). However, churches in Malawi have also worked against human rights due in part to the growing influences of conservatism and its anti-feminist agenda that has had an adverse impact on women's rights across the continent (Horn 2010, VonDoepp 2001).

## Gender equality and women's rights

Although the advocates did not directly make an argument based on gender equality in the skeleton arguments as a ground for review, narratives about gender and the rights of women manifested in multiple ways in the Pempho Banda et al. case. For example, SALC advocates argued that “too frequently, women are unlawfully arrested and detained by police on the charge of ‘living on the earnings’ when there is no basis or evidence to do so” (Correspondent 2016, SALC). The skeleton arguments submitted by attorney Maele historicized the gendered nature of the earnings on the living on prostitution law. This law was based on colonial laws which were meant to protect White women from being trafficked. The British Parliament later separated the laws to protect the female relatives of woman sex workers and prevent female sex workers from corporal punishment: “the House of Commons suggested the creation of a separate but similar offence applying to women that did not include the penalty of flogging or the presumptions relating to a person living with a prostitute” (Maele 2016). The judge highlighted discriminatory police actions in her ruling, noting the impropriety of arresting only women and of assuming that all women in rest houses were there for sex work (*The Republic v. Pempho Banda and 18 Others* 2016). This sentiment was echoed by sexual minority and gender rights journalist Mizere, who emphasized that soliciting is a crime, and as such males soliciting sex work should be arrested based on that alone: “They rarely arrest the men. They never arrest the one that is soliciting for sex” (Mizere interview).

News articles reporting about the case repeated actors in the criminal justice system's narrative about gendered policing practices and the gendered nature of the law. The *Nyasa Times* made at least three references to gender in their coverage, noting that “Judge Ntaba said the law does not criminalise against women prostitutes only” (Chilunga 2016, *Nyasa Times*). Other digital news sources printed similar comments, such as *Zodiak Malawi Online*: “[Justice Ntaba] also blamed law enforcers of using the law to promote harassment and discrimination against women” (Aubi 2016, *Zodiak Malawi Online*). The rest of the articles all relied on comments Justice Ntaba made in the case judgment about gender when addressing gender issues. These articles focused on highlighting that the living on the earnings of prostitution law was meant to apply to women sex workers only and that hospitality locations in Malawi were meant for both women and men. Some of these articles though, also mentioned that women were susceptible to

sex work due to poverty. But beyond this, there were no mentions of gender discrimination and the rights of women as distinct topics.

The decision to emphasize human rights over gender rights is consistent with the framing of the case by the legal advocates as a human rights issue. Although sex workers may have been able to establish *locus standi* for a gender discrimination case, advocates focused on human rights. This aligns with arguments by Gloppen and Kanyongolo who contend that cases directly litigating women's social rights such as gender discrimination cases are rarely accepted in court (2007). Many activists in Africa – and Malawi – recognize the obstacles to winning rights that women confront. Advancing women's rights and gender equality through Malawi's justice system has been challenging for activists because women's rights supporters have not had the organizational or tactical strength; for example, a sustained women or gender rights movement has not occurred in Malawi (O'Neil et al. 2016). This underscores arguments by African feminists and gender rights advocates who regard Western feminism as foreign; and argue for the inclusion of men in their feminisms (Agozino 2014). Such perspectives may lead them to have a greater affinity for supporting human rights over women's rights. However, feminism and women's rights have also been experiencing some backlash due to the influence of the US policies such as PEPFAR and local policies. Increasing religious fundamentalism and influence of faith-based organizations have rolled back many gains in women's rights activism through attempts to control women's sexuality and reproductive rights (Horn 2016).

The commentary section had a more robust discussion of both gender and women's rights. Some members of the public reflected a liberal feminist perspective, arguing that women should have control of their own bodies and should be free to sell sex. Others, in common with the radical feminist approach, felt that it should be banned, and that sex work was not work. Among their reactions to a visual of sex workers organizing, holding office, and wearing T-shirts were: “kkkkkkkk koma anachita kuvala ma uniform [“ha ha, they were even wearing uniforms”]” (John Kaka); “kkkkkkkkkkkk [“ha ha”] so you can even be called Chairperson ALICE?” (Kwemkhe); and “Prostitution now sex work in Malawi? By the way when then is the crazy government offering them certificates and degrees in formalities to this madness? Shame” (Vivian). These comments about the economic contribution of sex workers in the context of common attitudes towards women's work in the informal sector are best understood using the political economy perspective. This perspective considers the relationship between the state and

work in the informal sector and contends that women's work is undervalued, unappreciated, and their labor is not seen as adding value in the economy (Clelland 2013, Gerassi 2015). Other readers did regard sex work as work, commenting that sex work should be regulated or otherwise incorporated in to the formal sector. This is consistent with the argument in feminist political economy that all labor in the informal market – including the labor of sex workers – adds value to the formal economy even if their work is uncounted, unremunerated, or hidden. They also argue that such work in the informal sector is linked to global commodity chains in various ways (Clelland 2013, Dunaway 2014). Justice Ntaba highlighted that, even though their work is not formalized, sex workers do already pay sales taxes and otherwise contribute to the economy: “if they earn a living, they will be able to pay for the expenses, able to also pay the taxes. Most of them actually do pay their various taxes by the things that they buy, the things that they do, even for the places that they rent” (Ntaba interview). Radical feminists and Marxist feminists see this contribution as oppressive because they argue that capitalism is the oppressor of women – including sex workers – because their labor is dependent on men in an uneven and exploitive manner. Perspectives in feminist radical political economy contend that unpaid labor is gendered and raced through institutions like colonialism and marriage (Cohen 2018). This view is consistent with Marxist feminists and radical feminists who regard marriage as oppressive. Many of these feminists see prostitution as the nature of traditional marriage relationships in a capitalist society where women receive financial support in exchange for sex, domestic work and reproduction (Garcia-Rodrigo 2008, Jeffreys 2009). They further argue that this gendered structure bolsters the abuse and violence women sex workers face (Gerassi 2015).

Some readers who commented on gender issues speculated on the value of the judge's own work, suggesting that her gender influenced the ruling. For example, “is it hard to see that gender-issues hence emotions [and not law] are at play here? Where a male magistrate convicts female whores and a female magistrate frees them? merely becoz they are fellow women? What happened to putting aside gender issues when applying laws?” (The Analyst). Such comments draw on gender biased stereotypes that women in leadership are more emotionally volatile and their opinions are less valid, which often leads to a biased assessment of their work. Justice Ntaba highlighted that her ruling was based on the constitution, procedural irregularities, and human rights first: “no, my gender did not influence my ruling. One of the things that I believe in is the concept of human rights . . . the fact that the case involved women and I was a female

judge is something that [can lead people to] perceive that it's because of [my gender] .... I don't believe that if this case went before a male judge, the principles that were raised would have been any different [because] the law is set” (Ntaba interview).

### The struggles of sex workers & reform

Although most of the narratives focused on the legal aspects of the case, details of the living conditions and daily struggles of sex workers were also presented and represented. The presentation of sex workers largely focused on their position as poor and marginalized women who were vulnerable. Justice Ntaba mentioned that the women made their living off sex work, but they did not earn a livable income, which kept them vulnerable. She noted, though, that they were not on welfare nor a burden to the state despite popular beliefs to the contrary (Ntaba interview). Advocates also highlighted that it is often the poor sex workers who are most vulnerable. Maele argued that in part this is because they have to work in more public spaces: “when we think about sex workers we think about those that will go out in the streets or[?] in a club...[...] I have lived in locations where I know that there is sex work there – they have a proper house – they will have clients who will just come and see them there” (Maele interview). Mizere also mentioned that there were class distinctions between sex workers: “they have the upper-class ones” (Mizere interview). Even though some sex workers have managed to escape abject poverty, the vast majority of them are still poor, and are more susceptible to harassment by authorities (Beran 2012). Such accounts demonstrate how intersectionality is at play in the lives of Malawian sex workers. An intersectional perspective claims that gender alone cannot be used to understand the repression Malawian workers face. Gender and other social difference, such as class in this case, operate together to further marginalize Malawian sex workers (Gerassi 2015, May 2015). The media narrative was consistent in suggesting that both gender and class played a role in their harassment, which is similar to the Marxist feminist argument. Reporters wrote about both the gender aspects of the case and suggested sex workers highlighted sex workers’ economic condition, vulnerability, and marginalized status – some mentioning that sex workers entered the trade out of poverty as well (Ligokeka 2016, *Malawi News Now*). Readers in the comments section generally agreed with the narrative of poverty as the root cause for entering the field and for police harassment.

The actors in the criminal justice system provided accounts about the stigma that sex

workers face from the general public. Mizere and Justice Ntaba noted that Malawi was socially conservative and that the belief in the “moral codes” was in part responsible for the stigma they faced. They both suggested that the application of public morals was often selective and contradictory when it came to sex work. Mizere highlighted the following: “[As Malawians] we portray this image of conservative God-fearing people, so anything to do with people who show sexuality or something that is not the norm is looked down upon by the average Malawian. But a lot of [our] men ... [are] the reason why those women are on the streets or selling themselves is because there is a huge demand” (Mizere interview). Memory from FSWA confirmed the negative sentiments they faced, offering this account about stigma in the religious institutions: “when you just step in to the church, they change the topic. They will say, ‘ya you, you have to change! ... here we have sex workers, yet they snatch some other people’s husbands, they carry diseases, you have to change! Hey you! Come forward, let me pray for you! You have to change!’ ... in front of people! So, it was like, we were not going to church” (Memory interview).

Such sentiments about reforming sex workers were echoed by readers in the comments on media reports as well: “what I can advise these prostitutes is to be reformed and come back to Jesus who is going to supply with all their daily need and will care them other than continue with the dark work” (Kokani). The concept of rescuing and rehabilitating sex workers is a sentiment often shared by those anti-sex work feminists who want to see sex work end and alternative income sources for sex workers provided. Memory contends though that many sex workers go to church to simply pray or hear the gospel and not because they are seeking salvation from sex work. Mizere also contends that that much like the church, the government also emphasizes rescuing and reforming sex workers. She highlights that due to the prevalence of child sex work, the government sponsors reformatory programs for orphaned minors working in the sex trade (Mizere interview). *Capital Radio Malawi’s* article is the only article mentioning child labor in the sex trade industry although this was not in the context of rehabilitation policies. Another article did broach the topic of reform by addressing positive changes in sexual health practices of sex workers. The reform that article also addressed was the need to reform attitudes toward sex workers among healthcare professionals, so that sex workers could access health care (Correspondent 2017, *CSJ News*). Otherwise, issues focusing on rehabilitation and reform were not covered in articles.

Although the issue of stigmatization was directly addressed by the advocates, analyzing the terminology used also provides us a narrative about stigmatization. The advocates almost exclusively used the term “sex work” unless they were paraphrasing. This is consistent with the views of liberal feminists who regard the profession as work and view the term “prostitute” as pejorative. The media largely followed similar conventions, with “sex work” being the preferred term, although other terms such as “bar girls” and “hooker” were used. The public’s choice of words was more consistent with radical feminists who don’t regard sex work as work and argue that it is always abusive because it occurs in the context of male domination (Sutherland 2004). This is suggested when considering the public commentary, where the dominant terms “uhule” or “whore” and their derivatives were commonplace: “they call them ‘*mahule [or] uhule*’ and the sex workers are saying ‘no we are not ‘*uhule*’ - we are not *whores*, we are ‘*azimayi wo yenda*’ [which means] ‘women who move around’. It’s just like with gays - there is this stigma and discrimination. Malawi is very conservative. Even though underground we do a lot of things ....” (Mizere interview). Mizere argues that the term *azimayi wo yenda* is typically preferred by sex workers to the German or Dutch derivative, *uhule*. According to Memory, FSWA is trying to address such social attitudes toward sex workers: “we are trying to change things for people ... to not have negative attitudes to us” (Memory interview). She further highlights that FSWA has training programs with the police, government officials, healthcare workers, the clergy and larger community in order to tackle the stigma:

We want it to change. As an organization we have tried to involve the police, health workers, religious leaders, traditional leaders, and the community itself .... If we involve the police, they will know that sex workers have rights .... If we involve health workers, they will know that we have the right to have access for health .... The religious leaders, we involve them when we are doing things. (Memory interview)

The issues that sex work advocates have with meeting their advocacy goals focus on the limited resources they have: “we use the resources that we have, although it is small, but we try to change things” (Memory interview). Scarce resources were a common narrative amongst advocates, including SALC, who has to spread their resources amongst different advocacy campaigns (Esterhuizen interview). Similar to other African sex worker organizations, they are all impacted by policies like PEPFAR which create obstacles for receiving funding and building sustained sex worker movements (Mgbako 2016).

## Global connections

The narrative of the British colonial roots of the living on the earning of sex work and procedural laws were very pronounced by the actors in the criminal justice system. This was a core narrative of the grounds for review in the skeleton arguments which aimed at highlighting the original interpretations of the law. It also aimed at presenting historical precedence in its application to incorporate how such laws have been applied in other countries – both former colonial powers and colonies – to bolster their case. Advocates will use the living on the earning of prostitution law as part of the strategic litigation strategy in other African countries as well: “these are all colonial laws and so they are duplicated in other countries. So, [the case] shows that another court in Africa has affirmed this [law]. It’s not only for Malawi. From SALC’s point of view we use it to test other cases and duplicate this in another country” (Esterhuizen interview). In addition to highlighting judicial precedent, which is the custom in common law cases, the actors in the criminal justice system also questioned relevance of the colonial statute itself in Malawi’s contemporary context. Socio-legal scholars such as Himonga and Diallo (2017) argue that African laws reflect hegemonic and Eurocentric approaches to law which need to be decolonized to allow for more inclusive conceptions of the law. However, narratives linking colonialism and the current laws were not picked up by the media. Media reporters largely wrote about the law from a national perspective and in the contemporary national context without consideration for the global context or its colonial roots.

Justice Ntaba, however, did identify links between sex work in Malawi and global networks and technologies in her ruling: “there is a lot of material in Africa and worldwide on the issue of prostitution which covers the common prostitution on the street to the organized and technologically advanced prostitution on the net” (Ntaba interview). Mizere also suggested that technology has shifted some of the sex trade in Malawi to the internet, thereby allowing sex workers to attract wealthy local and international clients. They both suggested that Malawian laws needed to adapt to the contemporary sex trade. Readers commenting on the case also linked the trade to global technological processes: “things r hanging buddy, these evil things we r currently facing will be like nothing in future, as u can see technology. Azazel [the evil fallen angel in the Bible who influenced the corruption of humanity] is controlling this world” (Jaques). This role of technology underscores the narrative of technology facilitating the sex trade by

reaching across class in Malawi where internet access is still an indicator of wealth; although it now more widely available.

The impact of the global nature of the industry was reflected in Maele's observation about international infrastructure projects: "there are a lot of international organizations that have contracts in Malawi -- there are international contractors building roads, there are international contractors building railways from Mwanza to wherever -- this is bringing a lot of foreigners into Malawi. Now, the moment you have those contractors, like the ones building the road in Mwanza, then you'll see an influx of sex work to the district" (Maele interview). Maele adds that this type of escalation in sex work is occurring in Mangochi, Thyolo and other districts and that the hospitality sector facilitates these encounters: "most of these guys they will meet the woman at some drinking joint [or] some hotel where they are staying" (Maele). The international contractors he refers to are mostly Chinese workers who work on various construction projects and use the services of sex workers in Malawi. Similar trends can be seen in other African nations such as Uganda, where local county authorities have reported increases in sex work and children of Chinese descent in areas where infrastructure projects occur (Owiny 2017). This is also consistent with narratives from sex workers in the Chizimba and Malera (2011) study who identified the clients of Malawian sex workers as including the local South Asian population as well as East Asian and European tourists. These narratives underscore how sex workers in Malawi are impacted by the intersection of sex, race and class. As Black women in the Global South, they are specifically victimized because Black women are uniquely hypersexualized and systemically treated as inferior to their non-Black counterparts (Chizimba and Malera 2011, May 2015). It also highlights some of the difficulties in defining sex tourism in the Malawian context. Travelers such as contractors may not be considered tourists per se by advocates or researchers. However, Malawian tourism policies define tourists as individuals travelling outside their "usual environment" for "not more than one consecutive year for leisure, business and other purposes" which describes the situation of some contractors (Government of Malawi 2011, Government of Malawi 2017). Additionally, whilst some Chinese contractors and other travelers expect beforehand to engage sex workers in Malawi, others simply engage sex workers when the opportunity presents itself. Since this study's definition of sex tourism includes travelers or tourists who engage in incidental or planned commercial sexual relations as the main or partial motivation of their trip, many of these contractors can be considered sex tourists.

Tourists do not need to be in the country or district solely for the purposes of having sex to be considered sex tourists (Kibicho 2012). Although the Pempho Banda case occurred in the tourism and hospitality industry and involved sex workers, noticeably absent was the application of the term “sex tourism” to the case by both the advocates and news media. The news media, consistent with the advocates, often mentioned that the raid took place in the backdrop of the hospitality industry. They were also consistent in relaying that these locations are not meant for males’ use only. However, they did not use the term sex tourism either. Perhaps this is because such raids take place at a low-end rest houses which are largely locally owned and frequented by low wage domestic or regional clients. However, sex in the tourism industry does take place in the context of national and international global processes in Malawi. Tourist facilities like hotels are generally regarded as a rendezvous for tourists, sex workers and hotel employees, as are lower-end facilities frequented by backpackers who make up the majority of Malawi’s international tourists. However, police raids are rare both at high-end hotels occupied by wealthy local or international clients and at low-end hotels frequented or owned by European backpackers (Bisika 2009, Prowes 2004).

#### Mass media and media advocacy

As in all strategic litigation cases, the advocates in the Pempho Banda case included media advocacy in their strategy, i.e., they sought to engage the media as allies in the litigation process. It was a fairly effective effort: “they [the media] actually came to court throughout ... and they would even follow up when the case was coming to court, [and would ask] what’s happening? when are we filing our documents? so it was really ... it was a case in the media, to say the least” (Chizjozi interview). Public litigation experts describe the quantity and quality of media engagement as critical for disseminating information to the general public (Young 2016). The media typically presented pertinent details about this case from the perspective of advocates, as one advocate recounted: “there was a lot of media coverage in that case .... I got comments from different friends from different parts of the country after they heard about the case - some have seen it online, some have seen it in the print media - [it’s a] case that a lot of people got to know about. Sometimes I’m walking, I’m doing other things and then somebody stops me and says ‘I remember you from this particular case’ ... it got a lot of media attention and lots of people know about it” (Maele interview). Noticeably absent was coverage by the Malawi News

Agency (MANA) and Malawi Broadcasting Corporation (MBC), which are both government owned news sources. Foreign coverage of the case mainly drew from independent local media.

In short, for the most part, the media narratives were consistent with those of the actors in the criminal justice system. Journalist Mizere attributes this to the training that some members of the media receive: “most of the [journalists] including me, we got training through NGOs on how to cover such issues. We got training those days it was mostly from CEDEP, CHRR, and we have sources who are sex workers. You'll find that most of the stories that you read in the papers . . . the journalists, they write it in the way that they received the training.... That's why they use terms like ‘sex workers’” (Mizere interview). The actors in the criminal justice system also felt that the coverage was consistent with their message as well. Justice Ntaba observed the following: “there are a couple of media houses that actually did cover it very well. I think *The Nation* and *Daily Times* very much did and I think the *Nyasa Times* tried to do an opinion . . . on *Nyasa Times* social media pages as well. It did try to do a very, should I say, unbiased, honest depiction of the case” (Ntaba interview).

The general perception from actors in the criminal justice system was that the media covered the Pempho Banda case in a just matter. For example, Memory from FSWA mentioned that the media had done a poor job in the past, but its coverage of advocates’ work and sex work is improving: “before they were telling lies, they were not telling what we told them to say, they were hiding other things. So, we told them! Female sex workers, we had a training with the media people, we told them, ‘you have to tell what we have told you to say, you have to write what we have told you to write, don’t hide anything’” (Memory interview). She welcomes the improvement: “these days they are doing what we have told them to do. We have friendly media, that understands us. Not every media they understand us, but there are some media that – radio stations, newspapers – that understand us, so we use those people” (Memory interview). This account is consistent with strategic litigation organizations’ reports that reporters who have been effectively trained are “more likely to provide balanced and accurate coverage” about emerging sex worker cases (Young 2016:13). Media accurately reported the testimonies and perspectives offered by individuals who played a role in the case, presenting and representing the issues in a way that opened dialogue and debate about the status of sex work in the country. As aptly stated by Justice Ntaba, “the case has also offered an opportunity for the country to actually discuss the concept of sex workers and the various issues that happen to them and the impact that they have

on society and development, so I think that's something that I can see, since the case came out”  
(Ntaba interview).

## CHAPTER 5: SUN, SAND, SAFARI & SEX WORK DECRIMINILIZATION: REVISITING THE LAW IN AN ERA OF TOURISM DEVELOPMENT

### *Introduction*

Although Malawi is a socially conservative country, calls for separating criminality from sex work have become more audible. The media increasingly report views that sex work should be either legalized or decriminalized. The offense of living on the earnings of prostitution – and similar laws which impact sex workers - was inherited from British colonial law and has long been ambiguous in Malawi. However, when the Penal Code was carried over from colonial rule, through the Kamuzu Banda era, and into present day Democratic Malawi, the statutes on sex work were unchanged. There was little will to change the law, nor was decriminalization vocalized in political discourse. This left sex workers perpetually occupying a marginal space in which they may or may not be criminalized throughout Malawi's recent history. This legal status also left them susceptible to abuse from the police, unable to access justice and socially stigmatized. The purpose of this chapter is to explore what the narratives about the Pempho Banda legal case detailed by the actors in the criminal justice system and mass media reveal about the possibilities for the decriminalization of sex work in Malawi and the implications that this would have on the tourism industry. Support for decriminalization of some aspects of sex work in Malawi would advance the legal rights for marginalized sex workers and would also impact the tourism and hospitality industry in which they are employed. The chapter uses qualitative data from English-language digital newspaper articles and related reader comments, as well as interviews with the actors in the criminal justice system. The data will be analyzed using relational content analysis.

Actors in the criminal justice system and mass media largely framed the Pempho Banda et al. case around human rights and around legal rights related to the offence of living on the earnings of prostitution. Although these justice system and mass media actors focused on clarifying the Penal Code, the constitutionality of the law, and procedural irregularities, decriminalization of the sex trade was another theme in their narratives, though this was often implied by the journalists rather than explicitly stated. In the judgment of the case, Justice Ntaba directly addresses the issue of decriminalization by stating that other formerly colonized countries were debating the relevance of colonial laws including the decriminalization or criminalization of sex work. She further suggested that despite the contention around this issue, the country needed open dialogue about it because of the law's impact on sex workers and the

criminal justice system. “Malawi does need to have a frank discussion on the same, or our courts will be plagued in dealing with such cases” (*The Republic v. Pempho Banda and 18 Others* 2016), she was quoted as saying. Although actors in the criminal justice system suggested that the certain aspects of the law needed to be clarified, declared unconstitutional or decriminalized, the media was largely silent on directly addressing the question of decriminalization. I contend that through the continued use of strategic litigation tactics such as seeking out cases focusing on social issues, using media advocacy to sensitize the public, and making incremental gains to win rights for sex workers, there is possibility for sex work to be decriminalized. Decriminalization would allow sex workers whom support the global tourism industry, but are simultaneously marginalized by it, to be better protected by the law.

### *Overview of Decriminalization, Legalization and Criminalization*

#### Feminist perspectives on sex work

On-going discourse about the legal status of sex workers by feminists and sex work advocacy groups is often contentious. There is no uniform position on the best policy for sex workers among feminists. Sex work has long been a subject of debate among feminists who hold a range of positions supporting or opposing policies that either legalize, criminalize or decriminalize sex work. Pro-sex work feminists who either support decriminalization or legalization argue that, albeit in a context of limited alternatives, individuals choose to engage in sex work freely like any other employment decision. Therefore, sex workers should be awarded the similar legal rights and privileges as a person working in any other occupation. Such perspectives are typically shared by feminists with liberal viewpoints. On the other hand, anti-sex work feminists supporting criminalization argue that sex work is reflective of larger structures of gender inequalities and thus women do not have a real choice to engage in sex work; rather, they are compelled to become sex workers. They call for the complete or partial eradication of sex work. Many radical feminist and Marxist feminists advocate in favor of criminalization. However, even within these groups, there is no uniform position on their perspectives of criminalization of the trade. For example, Black radical feminists like bell hooks suggests that economic and racial domination are necessary components to analyzing feminist issue such as sex work. She is critical of White feminists that choose Whiteness and bourgeois values but do not support Black sex workers (Beran 2012, Gerassi 2015).

Anti-sex work feminists, “prohibitionists,” generally regard the need for sex work as a fundamentally male desire that objectifies women's sexuality, and thus they reject the idea that women are empowered or liberated by fulfilling these male sexual desires (Beran 2012). Instead they regard sex work as lowering the status of women and degrading. They see sex work as a direct extension of patriarchal dominance which reinforces oppression and challenge the assumption that sex workers have a choice and can consent. They argue that women cannot engage in sex work like a freely entered business contract because women are already disadvantaged due to the unequal relationship between men and women in society. They dismiss pro-legalization and pro-decriminalization feminist arguments about individualism, agency and free choice as a reflection of internalized oppression, male privilege that intrinsically maintains patriarchy. Anti-sex work feminists argue that sex work symbolizes male domination and commodification over women’s bodies that cannot be redeemed by individual women. They support domination theories which posit that when women exchange money for sex, they are solidifying their role as property because they are consenting to the male client’s patriarchal right over her. Their ideas align with those of Marxist feminist positions on sex work who also argue that women are oppressed and exploited economically through sex work because the industry relies on the economic dependence of women on men in a male-centric capitalist society (Gerassi 2015). Marxist feminists regard bourgeois marriage as a form of prostitution, and advocate for the abolition of sex work along with the abolition of all private property, of which women were the first form. For Marxist feminist, sex work is not a harmless private business transaction, but rather, a powerful tool for objectifying women through sexuality. Radical Feminist Andrea Dworkin, for example, describes all sex work as rape: “the only analogy I can think of concerning prostitution is that it is more like gang rape than it is like anything else” (Dworkin 1993:3). Therefore, because anti-sex work feminists generally view all commercial sex acts – including sex work, pornography or sex trafficking – as violent and oppressive, they support abolishing all forms of sex work and the sex work industry. However, they typically oppose policies that criminalize the sex workers themselves because such policies are viewed as oppressive and controlling. Rather, they favor policies that regard sex workers as victims, and sex work as an abuse of human rights (Beran 2012, Gerassi 2015, Sutherland 2004).

Pro-sex work feminists generally regard sex work from a functionalist perspective in that they view sex work as socially valued service that fulfills the need in society for sex (Beran

2012, Henslin 2014). They argue that since there is a natural demand for sex, individuals should be able to sell their bodies and provide sex freely in the market as a service. They take the position that sex work should be regarded as *work*. Contractarian feminist positions like those of Carole Pateman in particular, assume that sex and sexuality are natural and universal and should therefore be a freely available just like any other product or service (Pateman 1983, Sanders et al. 2018). In essence, their ideas reflect the liberal ideas of individualism, agency, and equal opportunity in the marketplace (Beran 2012). According to Mathieson, Branam and Noble (2016), this position reflects the influence of western neo-liberal discourse on the sex work debate. Neo-liberalism claims individual liberties are promoted by a free-market system, free trade and de-regulation, and it supports minimal government intervention in personal life or business. As such, some pro-sex work liberal feminists view sex work as empowering and liberating when women choose to engage in the profession for economic gain (Mathieson, Branam and Noble 2016). These feminists often argue that it allows for sex workers to have agency, find it oppressive and patriarchal when states attempt to control the choices a woman wants to make with her body, regarding it as interference in the private sphere outside of laying guidelines in the industry. Pro-sex work feminists argue that sex workers are able to provide consent and should legally have the choice to provide sex work as a service. Although many pro-sex work feminists acknowledge that women typically choose prostitution as a survival strategy when faced with no better alternatives, they regard the limited resources and options as a result of larger social conditions, not as the outcome of systematic subordination of women by men (Beran 2012, Gerassi 2015, Sloan and Wahab 2000). Therefore, pro-legalization feminists argue that there is nothing inherently wrong with sex work, other than the lack of regulation, and they regard sex work as consensual business transaction. Their position is to treat sex work like any other business transaction which would include state regulation of the industry, including such matters as “hygiene, control of disease, minimum standards of service and of working conditions, misleading advertising, payment of taxes and social security” (Beran 2012:31). Pro-sex work feminists therefore support sex workers organizing and forming groups to advocate for business rights in addition to legal rights and human rights.

African feminists and activists’ viewpoints represent a broad spectrum of perspectives within the debate about sex work which include the perspectives of Black, radical, liberal, Marxist, neo-liberal, and postmodern feminists. Similar to liberal or Marxist feminists, most

African feminists do not regard male domination as the primary oppressor of African women. They argue that foreign domination is as significant or more significant of a threat for African women (Agozino 2014, Ogundipe 1987). However, they also typically tend to hold anti-sex work policy positions (Mgbako 2016, Richter 2012). This highlights the complexities of fitting some of the prominent feminist perspectives on sex work in the Malawian setting. This study finds the perspectives of African feminisms and other feminist positions on sex work useful in understanding Malawian sex workers, however, it situates itself with the pro-sex work viewpoints in its approach to policy.

### Policy responses to sex work

The dominant legislative approaches to the feminist perspectives of sex work that have emerged in response to sex work are criminalization, legalization and decriminalization. In the criminalization or abolitionist approach, sex work and all forms of selling sexual services are completely prohibited. This includes exchanging sex for money, brothel keeping, pimping, and purchasing sex. This is the approach in countries such as the US and South Africa (Lutnick and Cohan 2009, Mathieson et al. 2016, Mgbako et al. 2017). Alternatively, criminalization may conform to neo-abolitionist perspectives in which sex work is illegal for the buyer but not the sex worker, in which case soliciting or living on the earnings of sex work through brothel ownership remain illegal. Sweden, Norway and Iceland have followed this “Nordic model.” It is the also the model advocated by most anti-sex work feminists although the ultimate goal of most of them is to move towards abolition (Beran 2012, Comte 2014, Ward and Wylie 2017).

The second approach, decriminalization, involves repealing legislation that penalizes parts or all of the sex work industry. Therefore, pimping or brothel ownership may still be illegal. In this model, sex work is not legal or officially condoned by the state; however, in countries that have implemented it, oversight of the industry shifts from the state to local councils. Local councils decided on tax collection, and other polices, but did not involve the police in the administration or implementation of the industry. In other words, decriminalization would allow for local administrations to find their own way of ensuring compliance with their regulations (Mathieson et al. 2016). This is the approach used in New Zealand and Denmark (partial decriminalization).

The third approach, legalization, makes exchanging money for sex, owning brothels, and pimping legal. It resembles complete decriminalization, except it includes legal provisions for the state regulating sex workers or the industry. Feminists favoring regulation support labor laws, unionization, vocational training, licensing, compulsory medical examination, taxation, and zoning laws. This is the approach used in the Netherlands, Germany, and Senegal (Foley 2017, Lutnick and Cohan 2009).

The basic premise of criminalization – outlawing all forms of sex work in order to end exploitation and commodification of women, gender discrimination and gender inequality – is attractive to feminists in their pursuit for justice. Radical feminist and political activist Julie Bindel argues that there is no way to make sex work violence-free or safe in a neo-liberal environment; therefore it should never be legalized (2017). Therefore, criminalization has enjoyed support from anti-sex work organizations, Marxist feminists and radical feminists. Criminalization has gained in popularity over the past few years and has become the dominant policy approach used by governments with the support of religious conservatives who regard sex work as a sign of moral decay. This has been accompanied by increases in policing and persecution (Vanwesenbeeck 2017, Weitzer 2006). However, pro-sex work feminists argue that this approach is unrealistic and doesn't speak to the lived experiences of women's lives – particularly the structural factors sex workers face. Sex workers themselves argue that criminalization robs them of autonomy and choice, relegating them to victimhood (Beran 2012). Opponents further argue that criminalization perpetuates stigma since the law forces sex workers further underground; presents obstacles to access to justice because sex workers fear reporting police or clients abuses or any other crimes against them; prevents participation in health care policy formation or accessing healthcare; forces sex workers to operate in isolation and or underground, thereby increasing the riskiness of the job; increases instances of police abuse against sex workers in the form of improper arrests and detention; and leads to economic, sexual, and physical abuse (Mgbako et al. 2017). (Mgbako et al. 2017) further argue that it has resulted in increased human rights abuses by the police in countries such as South Africa, where state resources of 14 million South African rand (US\$1,620,206) a year are channeled to the police to curtail the practice. However, these practices have neither reduced the supply of or demand for sex work in South Africa.

Due to these concerns and others, radical feminists have been supporting the neo-abolitionist model which Beran (2012) argues are more consistent with their values which are to cut demand and ultimately end sex work. However, the neo-abolitionist approach presents similar problems to abolition. Critics have argued that in most cases, it only exacerbates problems by driving sex work further underground and worsening working conditions. Additionally, it has not prevented the harassment because it still presents sex work as illicit, immoral and unlawful. It has also largely failed to address structural factors that marginalize sex workers in European countries where the close links between radical feminists with states have been established through organizations like the European Women's Lobby (Beran 2012, Vanwesenbeeck 2017, Ward and Wylie 2017). As Vanwesenbeeck (2017) argues, its implementation focuses on fighting sex and not criminal activity: "as structural conditions in terms of global economic disparities, gender injustice, poverty among women, gendered labor markets, and double sexual standards continue to exist, sex work will remain one of few moneymaking options for quite a number of women" (2017:1636). Due to the aforementioned reasons both abolition and neo-abolition are not a viable option for protecting the rights of sex workers.

Legalizing sex work has been offered as an opposite solution to the repression and persecution approach. Since the basic premise of this approach is grounded in personal choice, individual freedom, and combating stigma as well as stereotypes about the sex work industry, it enjoys the support of liberal feminists who support policies that legitimize sex work as a profession (Beran 2012). Anti-sex work feminists are critical of this approach because it doesn't consider sex workers victims and often equate it with criminal offenses such as sex trafficking (Beran 2012, Ward and Wylie 2017). Countries that legalize sex work focus on regulating the industry. They require sex workers to register, require mandatory health checks, and embed a sex work market into a country's economic structure, enabling tax collection as well as tourism revenue to be derived from the industry (Mathieson et al. 2016, Mgbako et al. 2017). Areas such as the Red-light District in Netherlands have become internationally known for their sex-oriented businesses and openly supporting sex tourism. Police do not interfere in the regulation other than conducting periodic checks to ensure that policies are being enforced such as certifying that minors and illegal immigrants are not working. This has reduced the number of street walkers as well as stigmatization in the Netherlands – polling has revealed that the general public accepts

sex work as work (Goodyear and Weiter 2011). However, critics have also argued that the Netherlands sanctioned neo-liberalism by embedding sex work in the market just like any other profession; the neo-liberal market facilitates the working conditions and status of women marginalized in the sex industry. Feminist perspectives in feminist radical political economy and Marxism fault the neo-liberal market place for being the source of labor abuse that women face, therefore they are against policies entrenching sex workers further in to the market (Cohen 2018, Gerassi 2015, Mathieson et al. 2016).

Other critics highlight that this system has been problematic for business owners in the sex work industry who complain of being overregulated, whilst unregistered businesses owners are not being punished. The same argument is made by sex workers who are registered when their counterparts who are not registered work underground. Regulation has been problematic because it typically is rooted in the characterization of sex workers as vectors of disease – particularly in an era of HIV/AIDS. In countries such Senegal, where sex work is legal and sex workers register in a government clinic for medical screenings and attend monthly education workshops, regulation has caused challenges. The threat of marginalization, stigmatization and social exclusion has become an obstacle for sex workers wanting to access social and medical services. Critics argue that this approach thereby often creates parallel unregulated sex work markets because some sex workers don't want to comply (Foley 2017, Goodyear and Weiter 2011, Mgbako et al. 2017). Critics such as Foley (2017) argue that in essence regulation has become a “legal mechanism to separate, exclude and marginalize women who fail to conform to sexual norms” (51). Therefore, this approach is often regarded as ineffective.

Due to the shortcomings of both criminalization and legalization, decriminalization offers a middle ground. Decriminalization removes criminal penalties for sex work but does not legalize it. Rather, all aspects of adult sex work are deleted from the criminal code and shifted to civil code for regulation (Comte 2014, Gerassi 2015). Unlike anti-sex work feminists, decriminalization proponents regard sex workers as professionals selling a service. However, they also recognize their vulnerability by offering them greater legal protection from sexual and physical violence. Therefore, they are careful to distinguish between voluntary sex work and involuntary sex work or trafficking which remain illegal. This approach is supported by some pro-sex work feminists who believe that sex work is indeed degrading to women but do not want to encourage it by legalizing it either. Other pro-sex work feminists are strictly contractarian; that

is, they only regard sex workers as service contractors just like any other wage laborer (Goodyear and Weiter 2011, Sloan and Wahab 2000). Decriminalization allows governments to recognize sex work without promoting it. Thereby, sex workers may enter into contracts like other business service providers, refer disputes for mediation, and receive access to healthcare without further stigmatizing them. Countries that decriminalize also benefit from sex tourism and tax collection (Goodyear and Weiter 2011, Mathieson et al. 2016). New Zealand has taken this approach and decriminalized soliciting, brothel keeping, and living off the earnings of prostitution through a 2003 Prostitution Reform Act. As such, instead of placing the burden on sex workers, brothels are responsible for ensuring that employees have met health standards and other regulations. Police also now protect sex workers rather than abuse them, making sex workers more confident that they could take complaints to the police and through the criminal justice system (Goodyear and Weiter 2011, Mgbako et al. 2017).

Critics of decriminalization argue that it will lead to an increase in sex work by youth and human trafficking. However, there is no evidence to support this. Supporters argue that decriminalization in fact will allow sex workers to become allies in combating these crimes because they have an interest in curbing child sex work and human trafficking. Other criticisms are that it increases supply and demand. However, this was not the case in New Zealand where the number of brothels and sex workers remained relatively unchanged. Another criticism has been that it does not prevent violence against women (Mgbako et al. 2017). This is true of all the approaches; however, with decriminalization, sex workers tend to feel the police would protect them and are more likely to tell the police. Decriminalization also puts sex workers in a better position to refuse risky behavior or refuse clients. Other recurring criticisms by radical feminists are that it still stigmatizes women, causes harm, and cannot ensure personal choice because sex workers' choices are constrained by lack of alternatives (Gerassi 2015, Mgbako et al. 2017).

Decriminalization is gaining increasing support from international human rights groups such as Amnesty International and sex worker advocacy groups such as the Association for Women's Rights in Development (AWID), Human Rights Watch (HRW) and Open Society Foundation (OSF). Sex worker activists' groups, including groups throughout Africa and FSWA in Malawi, are calling for an end to criminalization of sex work (Gerassi 2015, Global Network of Sex Work Projects 2017, Mgbako 2016, Vanwesenbeeck 2017). Although decriminalization has its inadequacies, it is the most viable option for Malawi. It offers a practical approach to sex

work that is grounded in the lived experiences of Malawian women, minimizes the stigmatization that they face, provides them with greater access to healthcare, and helps shift the focus of law enforcement from policing to protecting. As such, it is the model advocated in this study. It is also the position that appears most consistent with preferences of African sex workers, who want to be recognized as workers and not viewed as victims. In Malawi, NGOs such as Coalition of Women Living with HIV and AIDS in Malawi (COWLHA) support similar policies that remove the legal penalties (Muheya 2015). It is also the approach mentioned most frequently by actors connected to the Pempho Banda case. Therefore, this study considers this model promising for Malawi. This chapter examines that possibility by answering the fourth and final research question of this study:

*What does this comparison, as well as the surprising outcome of this case, reveal about the possibilities for decriminalization in Malawi and its potential implications for the tourism and hospitality industry?*

### *Methodology*

To respond to this question, data was gathered from both digital mass media and the actors in the criminal justice system who were directly or indirectly connected to the case. Data from mass media included the narratives from 11 English language Malawian digital news sources that covered the case between 2016 and 2017. It also included the corresponding public comments posted on news sources' websites and social networking sites. These comments were compiled, filtered for spam, and translated when written in Chichewa or Chitumbuka (Babbie 2010, Kim et al. 2016, Sohrabi and Karimi 2018). The data from actors in the criminal justice system included court records, in-depth interviews with them and other documents they produced related to the Pempho Banda case, using triangulation to help verifying information. Both types of data, from mass media and actors in the criminal justice system, were collected so as to draw out perceptions of sex workers' legal status and of decriminalization, criminalization, legalization and tourism. This allowed the study to gauge the opinions of the elite, which are important to this study because they make or influence policy.

Digital coding software was used for the narrative analysis of all these data. These were separated in to three main groups: newspapers, interviews, and court and advocate documents. Coding aimed to identify patterns and to mark material related to decriminalization and tourism.

Coding categories were inductive and deductive. They largely were inductive and categories were based on the data emerging from all the texts (Babbie 2010). The relational approach to content analysis was used and therefore, the analysis sought to draw out relationships among coded themes and words (Carley 1990).

### *The Possibilities for Decriminalization in Malawi*

In recent years, Malawian human rights organizations and sex workers' organizations have joined the chorus of sex workers across Africa calling for changes to legislation (NSWP 2017, Mgbako 2016). Organizations such as CHREAA, COWLHA and FSWA have been at the forefront of expressing the need to redress laws that impact sex workers. As such, sex workers from FSWA, Malawi's largest sex worker association, are calling to end legal barriers that they face from what they consider "archaic laws" (NSWP 2017). Similar to calls of sex workers throughout Africa, Malawian Sex workers oppose the criminalization of sex work and want sex work to be recognized as profession. As such, their approach to sex work legislation aligns with that of feminists and advocates that support the decriminalization or legalization efforts (NSWP 2017, Mgbako 2016, Vanwesenbeeck 2017). It is also consistent with criminal justice system actors connected to the Pempho Banda case who called for decriminalization.

Pro-sex work advocates were adamant about the need for change. Lawyer Fostino Maele mentioned that regardless of the legislation, sex work was always going to be a part of Malawian society: "the reality of life is that sex work is there, and sex work happens all the time" (Maele interview). Therefore, he felt it was in the best interest of the country to revisit and update legislation impacting sex workers. In the past, the colonial government, Kamuzu Banda administrations made no serious attempts to either enforce or clarify the offense of living on the earnings of sex work (Forster 2000). However, leaving the law ambiguous and open to interpretation presents a plethora of problems, particularly inconsistencies in the application of the law. "The moment we say it clearly, that 'this activity is not an offense,' it will give us a chance to now regulate who should be in that activity and what should be happening in that particular activity" (Maele interview). Ambiguity in law perpetuates the abuse of sex workers during arrest, leads to disagreements in policy and practices by criminal justice system employees and has bogged down the criminal justice system with extra courtroom cases. Ambiguity also obstructs standards' and guidelines' adherence to the country's constitution and

to international human rights agreements the country has signed (*The Republic v. Pempho Banda and 18 Others* 2016, Kangaude and Mhango 2018). Ambiguity also means that sex workers are regarded as criminals by the police and are thereby treated as criminals. SALC lawyer Esterhuizen argues that the perception of sex work as criminal also leaves sex workers open to having their other rights violated due to their criminal status even though this should not be the case: “once something is criminalized, they immediately treat people as criminals. But you can’t criminalize someone’s being.... Just because you’re a sex worker doesn’t make you a criminal (Esterhuizen interview). As such, his organization was supportive of Malawian organizations seeking changes in the justice system.

Maele supported both clarification of the law and an unequivocal end to criminalizing sex work in Malawi: “the law is not clear that it criminalizes sex work.... So, I would actually say, the law should just come out clear and say, ‘sex work itself is not an offense....’ It should just come out clear” (Maele interview). Not only does the obscurity create inconsistency and confusion for actors in the criminal justice system, but for sex workers themselves who do not know whether their conduct is illegal. Memory from FSWA highlighted that as part of their advocacy work for decriminalization, their organization often attended court cases in which they had an interest due to obscure legal status: “the people at the court there, they supported us, because they knew that we come out, they knew that we were tired of not telling us which is which” (Memory interview). Although Justice Ntaba affirmed that sex work was legal, she noted that the law still needs to be addressed: “I seriously believe, Malawi does need to have a frank discussion on the same or our courts will be plagued in dealing with such cases” (*The Republic v. Pempho Banda and 18 Others* 2016). She indicated that the law needed to be consistent with the constitution which guarantees personal liberties to all citizens such as the rights to dignity, economy and development (Ntaba interview). Her sentiments are consistent with other human rights activists such as the Director for Lawyers Forum for Human Rights, Mtende Msindama, who reported to *Zodiak Malawi Online* that the Penal Code provisions were inconsistent both with the constitution and with human rights principles (Kamlomo 2016). Indeed, the clearest way to address the vagueness of laws such as the living on the earnings of sex work law, is to declare it unconstitutional by repealing Sections 145 and 146 of the colonial Penal Code, after which new legislation which clearly and unequivocally states that sex work is not illegal can be enacted. New legislation could use language reflecting liberal feminist perspectives on sex work

as well as human rights language consistent with the treaties Malawi has signed (Kangaude and Mhango 2018).

Sharing similar sentiments about how the current law impacts sex workers, Chijozi from CHREAA adds that clarification of the offense of living on the earnings of prostitution alone will not prevent sex workers from being victimized: “there is no specific law which actually criminalizes sex work – there is no express provision, which says that prostitution is an offense in Malawi – but then there are laws that target sex workers” (Chijozi interview). Sex workers are typically targeted instead through related laws: “what [the law] does is criminalize activities that surround sex work” (Maele interview). Related laws contained in the Penal Code, such as Rogue and Vagabond or Idle and Disorderly sections, would still leave sex workers marginalized in the justice system. These related laws are what the advocates are targeting for decriminalization. “Those are all offenses that directly target sex workers. [If] you are sex worker you’re behaving in an indecent manner in a public place, you can be charged under the ‘Idle and Disorderly’ offense.... We still have ‘Idle and Disorderly’ where it targets someone that is a reputed thief..., someone who is a suspected person..., so we are also in court trying to challenge that offense, because we also feel that it is too broad.... What is a suspected person?” (Chijozi interview). During the judgment of the case, Justice Ntaba suggested that criminalizing the living on the earnings law and related activities were unconstitutional. She also highlighted that the lack of clarity on sex work would continue to be problematic if unresolved: “I am not here to advocate for criminalization or decriminalization of commercial sex work or prostitution but only to highlight that prostitution related offences in Malawi shall remain an area of blatant discrimination, unfairness, inequality, abuse as well as bias from law enforcement as well as the courts as evidenced in this case” (Ntaba interview).

The Malawian media in this case served as an ally for the advocates, and hence for decriminalization efforts. The way in which the case was reported provides us confidence that through the use of media advocacy, journalists in Malawi will continue to present sex work and sex workers in a manner suggested by pro-sex work advocates. The coverage was issue based, conveying the message that the treatment of sex workers in the case was both unconstitutional and contrary to the moral principles of human rights. The media relied on expert witnesses from the actors in the criminal justice system directly or indirectly involved in the case, which helped to authoritatively and appropriately frame the issues. Media content focused on such issues as

judicial irregularities, due process, and the written law. Their narrative also painted sex workers as victims of police abuse and marginalization in the criminal justice system. They also focused on gender-based policing and discrimination, with media reports typically highlighting that women patronizing hospitality and tourism locations should not be perceived as suspected sex workers whilst males were left alone. Journalists appeared sympathetic to the rights of the marginalized, often referring to them as “workers,” which is what pro-sex work feminist advocates and sex workers themselves prefer (Gerassi 2015).

Veteran journalist Agnes Mizere observed that many Malawian journalists that report on sex workers write the way that they have been trained. She argues that there is a distinction to be made between professional journalists and tabloid journalists, the latter being more prone to sensationalist journalism. She adds that the sensitivity of journalists is reflected in the training they receive (Mizere interview). Memory also mentioned that FSWA works and trains with select journalists to sensitize to them about issues sex workers face (Memory interview). Since media plays a key role in framing the issues and influencing the public discourse, their role was vital in raising the legal status of sex work to the public in strategic litigation cases, thereby setting the agenda for a national conversation on possibly decriminalizing aspects of sex work (Matthes 2010, OSJI 2018). *Capital Radio Malawi*, for example, reported that “Currently, selling sex is not criminalised but a number of laws ranging from rogue and vagabond, earning money through prostitution continue to suppress a group of marginalised of sex workers who are not able to defend themselves properly when brought before the court of law even when they are innocent” (Monjeza 2016). Since media messages were generally consistent with that of the advocates, their role as part of the strategic litigation process was instrumental.

The general public’s reaction to the media coverage provides us further insight into the possibilities for decriminalization. Since Malawi is both socially and religiously conservative, backlash on this ruling can be expected. As evidenced in the public opinions expressed from commentary on Facebook and other social media, many Malawians opposed the ruling in the Pempho Banda case and called for enforcement of criminalization, as in this example: “End prostetutions without mercy. we got high number of ophans they [are] killing millions of people. Their secrets are bullshit they never say they got Virus lock them up” (Ada). Such discourse framed sex workers as disease ridden, malevolent threats to the body politic that must be destroyed. However, many Malawians supported the ruling on the grounds of human rights, legal

rights or their sense of humanity. Many others expressed neutral opinions, leaving open the possibility that they may support future efforts for decriminalization. Though the reactions from the public aligned with both pro- and anti-sex work positions, they had opened up dialogue about which position to take and about the need to clarify laws. Even seemingly negative comments offer possibilities of progress, such as the following popular sentiment which linked sex workers to diseases: “why the CSOs [Civil Society Organizations] were backing for the sex workers, bcauz these pple were encouraging the spread of HIV and AIDS through their job, *apa bola kuunikanso malamuro dziko lino* [“it’s better if they create laws in this country”]” (James). This type of comment underscores the desire for clarification in the legislature. It is also ironically in support of pro-sex work advocates who typically use the public health argument to support decriminalization (Vanwesenbeeck 2017). Given evidence that criminalization undermines attempts to control HIV/AIDS, commenters like James might be receptive to supporting decriminalization.

Although negative, anti-sex work views dominate the online public comments analyzed, there are also positive, pro-decriminalization comments, like these reactions to a *Malawi 24 News* report:

Samuel: Ife tilibe nazo ntchito zimenezo, what about rogue and vagabond should be illegal in malawi, tatopa kuthamanga ku bibida [“we don’t really care about these things . . . , we are tired of defecating on ourselves”]

Baluwa: Should be legal indeed.

John: Kumangozuzana za zii [“torturing each other on silly stuff”]

Thabo: zopusa basi akutiphela ufulu wamamwedwe [“very silly, now they want to take our freedom of consuming alcohol”]

This conversation provides us insight into the connections that the public is making from the case. It highlights that supporters of decriminalization efforts are concerned about the impact that this law is having on the society as a whole, particularly on those that are marginalized. They view the rights of sex workers as fundamentally linked with the rights of all Malawians, such as the comparatively mundane right of alcohol consumption. In particular, Samuel’s initial comments suggest broader receptiveness to decriminalization, such as eliminating the unpopular Rogue and Vagabond laws, which in fact were repealed a few months later through strategic litigation (SALC 2017). These conversations, albeit just a sample of Malawians’ diverse public opinions about sex work, show that the discourse on sex work can be based on morality derived

from human rights as well as from religious convictions. This opens up the possibilities for public support of sex work.

Outside of the Pempho Banda case, it is clear that there is growing support for decriminalization of sex work and laws impacting sex workers in Malawi. In the past few years, newspapers have reported various human rights organizations and government officials openly talking about legalization or decriminalization. A 2015 study by COWLHA, “Gender-based Violence and HIV Documentation,” recommended legalization of sex work as a response to gender-based violence and challenges to accessing healthcare for sex workers (Muheya 2015). It advocated for regulation of sex trade and enacting a taxation system. However, at the time no politicians or Members of Parliament who were asked by the *Nyasa Times* were willing to support COWLHA’s calls for change by introducing a bill in parliament. Although COWLHA is calling for legalization, decriminalization is similar, and so support for legalization might be converted into support for decriminalization.

In 2017, a year after the Pempho Banda case, Member of Parliament Frank Mwenifumbo made headlines for proposing legalizing sex work as part of the HIV and AIDS (Prevention and Management) Bill. He further suggested health tests and a designated area for registered sex traders as ways of controlling new infections. However, his proposal was not included in the final bill. Mwenifumbo’s sentiments are consistent with feminist justifications for sex work which often cite healthcare as a reason for decriminalizing or legalizing. But although local NGOs and human rights organizations supported the idea, they also publicly problematized his characterization of sex workers as vectors of disease (Gwede 2017, Mkhaliipi-Manyungwa 2017). Mwenifumbo is a United Democratic Front Vice-Presidential candidate in the 2019 elections, which raises the possibility that such issues will be further considered by the political elite and lawmakers. As Malawi is moving towards more issue based politics – including hosting Presidential and running mate debates – politicians’ positions on social issues are becoming more important, providing a larger future platform discussion of sex work related issues (Loka 2019). This will make the path for decriminalization easier, so that sex worker advocates will not have to rely on strategic litigation alone.

Thus far, making policies more sex worker-friendly has relied on small gains through strategic litigation. In New Zealand, growing concerns over AIDS led to decriminalizing sex work throughout the country. Like Malawi, New Zealand inherited British colonial laws that

criminalized soliciting, brothels, and procuring and living on the earnings of prostitution (Goodyear and Weiter 2011). In Malawi, changing those laws is slow and incremental, but that may be the surest path forward. Strategic litigation is helping to slowly decriminalize aspects of abortion, which is illegal in Malawi (cf. Ezer and Patel 2018, Kangaude and Mhango 2018). In the case of sex work, sex workers first secured their rights against forced testing in the Mwanza 11 case, followed by the Pempho Banda case. This was followed by the Gwanda Mayeso case in which a sex worker was not the litigant, but which resulted in decriminalizing the Rogue and Vagabond Laws which impact sex workers. These cases have laid the groundwork for securing other rights for sex workers (Ezer and Patel 2018, Southern African Litigation Centre 2016).

Similarly, sex workers stand to gain additional rights from the ruling in an upcoming case on the constitutionality of police raids sweeping exercises. SALC and CHREAA are involved in a case heard in the High Court in March 2019 focusing on individuals arrested during a sweeping exercise at a bar, which coincidentally will be heard by Justice Ntaba (SALC 2019). Justice Ntaba's appointment to office in 2013 by President Joyce Banda increased the number of women judges serving on Malawi's High Court (Mogha 2013). As an advocate for women's rights and expert in international, constitutional, human rights and development law, her appointment also was important for advancing the rights of women and other marginalized groups. Additionally, she has a record of consistently applying the rule of law even in cases that challenge the authorities within the judicial system (Habitat III 2016, Rickard 2019). This judge and others have been using a wide definition of *locus standi* and are accepting strategic litigation cases, which has opened opportunities for court cases on social issues. Therefore, Malawi's robust, independent judiciary, coupled with a pro-poor constitution, has facilitated achieving rights for marginalized communities in the past and creates favorable conditions for decriminalizing sex work (Gloppen and Kanyongolo 2007, Nkhata 2008).

Calls for decriminalization in Malawi follow a general trend in Africa in which sex workers seek to overturn laws that criminalize sex work. Organizations such as Amnesty International and UNAIDS also promote decriminalization on condition that doing so does not further victimize sex workers. Decriminalization is a seemingly auspicious approach to sex work legislation for countries such as Malawi that are socially conservative – it removes the criminal element of sex work without legalizing it, thereby limiting backlash from religious and social conservatives. However, this model is still rare in Africa and other parts of the world in part due

to the influence of western religious conservatives, political elites and anti-sex work feminists who have been pushing repressive socially conservative policies upon sexual minorities worldwide (Horn 2010, Odunsi 2010, Vanwesenbeeck 2017, Weitzer 2005). In Africa, the dominant framework has been to criminalize sex work. Some former British countries such as Nigeria, Tanzania, Zambia, and Kenya still have similar living on the earnings of prostitution clauses in their constitutions as well as laws criminalizing activities surrounding sex work, which leave sex workers in legal limbo. Countries such as Tunisia and Senegal have taken bold steps to legalize it (Odunsi 2010, Sexuality Poverty and Law Programme 2019, Vanwesenbeeck 2017). In Senegal, it is fully legalized and regulated. However, where sex work is legalized, registration of sex workers has created stigmatization for those registering, causing unregistered sex workers to go underground. In contrast, in South Africa sex work is completely criminalized, which has created abusive conditions, stigmatization and unsafe working conditions. Since New Zealand fully decriminalized sex work in 2003, no other country has done so (Goodyear and Weiter 2011, Mgbako et al. 2017, Vanwesenbeeck 2017).

Decriminalization in New Zealand has led to sex workers enjoying rights they lack anywhere else in the world. Their rights in New Zealand include the right not to be subjected to discrimination, the right to safety, the right to respect for private and family life, the right to work, and the right to health (Sweetman 2017). Decriminalization of sex work would mean that Malawi can meet international human rights and constitutional commitments, including constitutional rights to dignity, livelihood and development. It would safeguard sex workers from arbitrary arrest, detention, and harassment by police. Police would no longer have the backing of criminal laws to threaten or arrest sex workers, and sex workers could access justice when they are victims of abuse from police and clients. Studies suggest that decriminalization would improve the effectiveness of Malawi's health policies, interventions, training of sex workers and training of health professionals on the particular needs of sex workers (Gloppen and Kanyongolo 2007, Mgbako et al. 2017). Malawi is already on a path to decriminalize sex work through the activities of advocates, sex workers, scholars and their allies. They have achieved small gains for sex workers which implies the possibility for future gains. However, this does not relieve the government of an obligation to declare current sex work related laws unconstitutional and to clarify existing laws.

### *Potential Implications for the Tourism and Hospitality Industry*

It is clear that the debates between pro-sex work feminists and anti-sex work feminists are contentious. It is also clear that due to the structure of the tourism industry, sex workers in Malawi will remain vulnerable to abuse. A push to the extremes of criminalization and legalization will further marginalize sex workers due to neo-liberal led growth. Criminalization and legalization models have both pushed sex workers further underground and stigmatized them. Decriminalization will allow them to get out of the shadows of the informal economy, but still retain some protection from the state. As the country seeks to further invest in tourism development it needs to consider the policies towards sex workers who support the industry as an integral part of the tourism development goals. The county cannot expect to grow tourism, without fueling the sex trade and needs to be proactive in policies impacting sex workers.

Because sex workers in Malawi typically work in entertainment places, hotels, bars, pubs or other drinking places, a discussion about fully decriminalizing sex work policy must consider the linkages between the sex trade and the tourism industry. Sex work and tourism have become so inextricably linked in Malawi that during sweeping exercises it has become commonplace that women found in hospitality locations are arrested for suspicion of being sex workers. This occurred for some women charged in the Pempho Banda case (Chizimba and Malera 2011, Kibicho 2012). As a part of the judgment, Justice Ntaba affirmed that the practice of arresting women in tourism and hospitality locations on suspicion that they were there for sex work was discriminatory. She stated that hospitality locations in the country were not meant to be male spaces: “Hotels, inns, rest houses and motels were not meant for men only but for both men and women,” she said in her ruling. Ntaba declared that women were free to be at any hospitality facility and should not be arrested on suspicion of indulging in prostitution” (Malenga 2016a). The intersection of sex work and tourism cannot be understood as isolated events resulting from the behavior of a few individuals nor simply as expressions of sexism, racism, classism or the even the local politics in Dedza. This intersection must also be understood in the context of the larger relations of power and production in the tourism industry (Truong 1990:129).

Malawi identified tourism as one way to diversify its single crop agricultural-based economy. Malawi embraced capitalism shortly after independence, relying on agriculture but also offering some social safety nets. However, from 1980 to 1998 Kamuzu Banda ushered in structural reforms through World Bank and IMF structural adjustment programs (SAPs).

Compared to other countries, Malawi's government was fairly compliant with the SAPs which resulted in the situation worsening for Malawi's poor: mortality rates and income inequality increased, GDP growth rates and calorie consumption per capita fell, and income per capita became the lowest in Africa. The situation was exacerbated by the AIDS epidemic (Booth et al. 2006). Malawi remains one of the poorest nations in Africa and is heavily donor dependent. Its economic performance has been constrained by policy inconsistency, macroeconomic instability, poor infrastructure, corruption, high population growth, and poor health and education outcomes that limit labor productivity (UN 2014, World Bank 2018a). Therefore, many Malawian women turn to sex work to escape poverty. Encouraged by international financial institutions, tourism development has been identified as a core part of the country's development agenda. Subsequently, like in much of Africa, Malawi is scaling up its tourism offerings in order to create jobs and gain foreign exchange.

African nations started to embed tourism into their socio-economic development plans since the Organization for Economic Co-operation and Development (OECD) touted tourism as promising for African and Caribbean economic development as early as 1967. Tourism development projects subsequently began receiving support from the World Bank and United Nations. Sharpley (2014) defines tourism as "a social phenomenon which involves the movement of people to various destinations and their (temporary) stay there" (18). Due to technological advances in transportation, rapid globalization, increases in leisure time and increases in disposable income tourism to the Global South has increased. The World Bank estimates that about US\$339 billion of global spending on tourism occurs annually in emerging economies (Christie et al. 2014, Kibicho 2012, Pattullo 2005). Since global North tourists are now constantly seeking to "explore" "untapped" "exotic" destinations and Global South tourists have more disposable income, the Global South became a focus of attention in the industry. Realizing the potential for profits, governments in the Global South are trying to gain a market share of an industry in which the direct, indirect, and induced impact on global GDP in 2011 alone was an estimated US\$6.3 trillion (Christie et al. 2014:24). Encouraged by the potential huge profits in the industry as well as the relative willingness of multi-lateral organizations to provide loans and funding for tourism projects over other development projects, African countries increasingly looked towards tourism development. (Christie et al. 2014, Pattullo 2005).

Tourism scholar Dieke (2003) argues that tourism as an export has the ability to create jobs and be a major foreign exchange earner, bringing in needed revenues.

Critics of tourism development often point to the growth of sex tourism industry as a reflection of global flows of inequality in the post-colonial era (Jeffreys 2009). One of the industries that grows as a byproduct of tourism growth is sex work, even when sex tourism was not the intention. Sex trade in the tourism sector can encompass a variety of complicated romantic or sexual relationships in exchange for money or other benefits. Therefore, attempts at defining sex work in tourism contexts can be contentious and problematic (Carr 2016, Kempadoo 1999, Kibicho 2012). The broader definition of sex tourism used by some sex tourism scholars and offered by Kibicho (2012) in his study of Kenya is “tourism for which the main motivation or part of the objective of the trip is to consummate or engage in commercial sexual relations” (17). However, this definition is limiting because it doesn’t adequately account for domestic tourism. The definition of sex tourism used in this study is: *travel or tourism for which the main motivation or part of the trip involves engaging in incidental (situational) or planned (preferential) commercial sexual relations*. This is suitable for the Malawian context because it includes international, regional and/or domestic clients who may be travelling in the destination for other purposes but are also motivated or may become motivated to engage sex workers. Although sex tourism often evokes images of older White males from the Global North travelling to developing countries, sex tourism also includes wealthy men travelling from other parts of the same country or region (Clift and Carter 2010).

Critics of tourism development use post-colonial theories to argue that international tourism is structured so that developing countries are subordinate partners in tourism exchanges (Harrison 2015, Jeffreys 2009). Using dependency and world systems theories, they contend that countries in Africa are at the periphery of the global capitalist system which keeps them in their roles as the providers of raw materials and cheap labor. They regard tourism as an extractive industry benefitting the wealthy, with neo-liberal policies exacerbating conditions in local communities by promoting liberalization of international trade, privatization of industry and the opening of borders to foreign companies. Critics argue that this exchange leaves countries economically, socially, culturally, and/or politically dependent and exploited by their more developed partners. As such, they contend that local people have lost access to land and property or have lost control over their own resources and bodies due to tourism development; tourism

has endangered livelihoods of the poor thereby facilitating sex work. The poor are also marginalized by policymaking and institutions which cater to foreign investors and the country's elite. Therefore the labor of sex workers embedded in this uneven economy is further marginalized (Bianchi 2009, Harrison 2015). Caribbean islands have been particularly affected by tourism development because they account for a disproportionate amount of the world's tourism traffic. Sex work has flourished in the Caribbean to the chagrin of pro-sex work advocates. Critics such as Pattullo (2005), Mullings (1999), Phillips (1999), Carter and Clift (2010) and others have argued that neo-liberal capitalist expansion has led to uneven and unequal tourism development in the Caribbean. They argue that tourism development is having a negative impact on sex workers in the Global South, with many such as Kempadoo (1999) and Mullings (1999) explicitly calling for sex work decriminalization. Since Malawi is a Global South nation and occupies a similar location in the political economy as Caribbean nations and faces similar constraints, this study's approach to sex tourism is built on the perspectives of dependency and post-development theorists who have documented the impacts of tourism on Black and Brown female bodies.

The sex work industry is characterized by a wide range of gendered and racialized arrangements between tourists and sex workers. Much of the literature has focused on women sex workers. In recent years, there has also been a focus on male sex workers with female clients, identified with the Caribbean "rent-a-dread" culture. In African countries such as Kenya, Gambia and Malawi such male sex workers are called "Beach Boys" (Jacobs 2010, Kibicho 2012, Prowes 2004). Researchers have highlighted that the tourism industry as a whole is structured in a gendered way. That is, travel has historically been a gendered activity in which men had the luxury of travel whilst, due to the conditions of the labor market, women are economically desperate enough to enter the sex trade (Carr 2016, Carter and Clift 2010, Kempadoo 1999). Such labor tends to be viewed as cheap and docile. As such, sex workers in the Global South are extremely vulnerable to exploitation, violence and human rights abuse at the hands of tourists, as workers are in other export-oriented industries. Sex tourism is also an industry which is racialized in that the wealthy clients are typically White and from the Global North, and the sex workers poor and Black or Brown. A large percentage of sex customers seek sex workers whose racial, ethnic, national or class identities are different from their own. Therefore, the Global South becomes a site in which sexual fantasies about the "other" can be

realized (Davidson and Taylor 1999, Mullings 1999, Truong 1990). Similar dynamics can be seen between wealthy domestic tourists and Malawi's poor sex workers. This phenomenon is a visible reminder of racial, economic and gender inequalities between tourists and locals.

In Malawi, the sex tourism industry is an under researched area often ignored by researchers, policymakers and government alike. However, it is being given more attention by government due to the growth of HIV/AIDS nationwide as well as the increase in child sexual exploitation in tourist destinations such as Nkhata Bay, Nkhotakota, Monkey Bay, Salima and Mangochi. Malawi's sex tourism industry is devoid of organized sex tours by travel agencies or operators that one would find in the Netherlands. Since brothels are illegal, the majority of sex work takes place in lodges, rest houses, hotels, tourist resorts and restaurants, beaches, the lake, bars and so forth. Male and female tourists have multiple sexual encounters with employees, commercial sex workers, and hotel employees (Bisika 2009, ILAB 2009, Chizimba and Malera 2011, Kishindo 1995). Bello et al. (2017) and Chilembwe (2014) report that in Mangochi scaling up tourism facilities led to increases in sex workers whose services were patronized largely by domestic tourists who were in the area to attend meetings and conferences. Whereas it may be difficult to prove causation, it is clear that wherever tourism flourished, sex work has been intensified.

Dedza, Malawi is a growing city. Currently, Dedza city has growing small and medium businesses in the formal sector, and its informal sector is also experiencing growth. It has therefore seen an increase in nationals from China, Burundi, Rwanda, and India operating retail businesses in the urban and peri-urban areas of the district. Their customer base includes a diverse indigenous ethnic groups, Mozambican nationals, and international employees of twenty-three local and international NGOs whom live in the area (Chizimba and Malera 2011, Government of Malawi 2014, McNeish 2016). As such, sex workers are attracted to this area due to the availability of potential international and local clients that live there and have disposable income. Dedza is also an area that attracts travelers and tourists. As a border district and a lake shore district, Dedza District hosts a sizable domestic and international tourist population and is also strategically placed for tourism growth. It is halfway between the nation's capital and business capital, Blantyre. Dedza District is also near the lake resorts at Cape MacClear and Mangochi and the Liwonde National Park. As such, the Dedza District Social Economic Profile 2013-2018 has identified several sites in Dedza in line for more tourism development. As a

tourism destination its topography is mountainous and has a vast forest reserves which allows for outdoor tourism activities such as birdwatching and hiking. It has cultural centers including Kungoni Centre of Culture and Art at the Mua Mission, the Dedza Pottery and Coffee Shop, and a World Heritage site of rock art. It also has numerous cafes, restaurants, bars, lodges, and hotels in the area which make Dedza an attractive tourism destination (Government of Malawi 2014). It is therefore the quintessential destination for sun, sand, sea, safari, and sex tourism. Its tourism development is also expected to grow. Since sex work is a core part of tourism development in Dedza and the larger country as a whole, its role needs to be recognized in policy.

Although in itself tourism did not the cause the sex trade, it provides easy access to it, facilitates it, accelerates it, and is inextricably linked to it. Therefore, changes in the law which makes it an offence to live on the earnings of prostitution and changes in related laws that marginalize sex workers (e.g. vagrancy, loitering, idleness and so forth) improve the conditions for sex workers and the tourism industry. First, as long as the laws remain ambiguous and vague, sex workers remain unprotected and vulnerable to human rights abuses in this industry under the hands of business owners, the police and clients. Decriminalization would mean that sex workers can be better protected from violence and abuse because their negotiating power for safer sex – such as condom use or work in safer areas - would increase; clients would be deterred from transgressions knowing they can be reported. Sex workers can report crimes without fear of being revictimized by the police, and they can have greater access to justice when needed. It will also deter abuse by the police themselves, including the need for hotel raids. If sex workers no longer fear the police, they would be in a better position to report crimes committed against them. Since the tourism industry facilitates sex crimes, the tourism sector will be a safer sector for both sex workers and clients.

Second, Malawian sex workers occupy a marginal space in the informal sector of the international labor market. Their labor in the sex work industry supports the global tourism industry but is not visible or counted. Their labor needs to come out of the margins where is undervalued, provides hidden value, and is not counted. Decriminalization of sex work would mean that the tourism industry would be able to better account for the revenue that is made from the labor of sex workers, thereby making their true value to the industry more visible. This will help decrease stigma based on the belief that sex workers are a burden to the country because they live off the state and do not contribute to the economy or pay taxes.

Third, sex work is not currently recognized as work. It needs to be legitimized as work in legislation so that law and policy include their labor. This will allow them to feature more prominently in policies about them and will enable them to be consulted in policies affecting them; it will also reduce stigma against them because their work will not be criminalized. Currently, sex workers only feature in government policies in conversations about HIV/AIDS or Child Trafficking. However, individuals working in the hospitality industry are vulnerable to HIV/AIDS and need more nuanced policies suitable for their circumstance (Bisika 2009). Decriminalization will allow hotel employees, hoteliers and sex workers in the industry to have greater access to healthcare and policymakers because being associated with an illicit trade increases stigma towards sex workers and potential allies. Therefore, decriminalization will increase access to healthcare for sex worker and help combat sexually transmitted infections such as HIV/AIDS.

Fourth, arresting sex workers and other women through sweeping exercises at hotels, entertainment locations, and similar locations is a violation of their rights. Currently, women found in hospitality and entertainment facilities are profiled and harassed because they are suspected of being sex workers. These perceptions are discriminatory and create stigma against women in Malawi found in these facilities. They also reflect the larger practice of policing women's bodies in Malawi by the police, state, and the larger community. They also create gendered spaces in Malawi because the fear of stigma discourages women from patronizing hospitality and entertainment facilities which limits their freedom and hurts businesses that rely on the tourism industry. Decriminalization of sex work will affirm that sex workers and other women have the right to be in any public spaces – particularly tourism locations - without being criminalized, stigmatized or discriminated against. This will help businesses impacted by police raids or low patronage retain their clients, thereby increasing productivity in this sector. It will also advance women's rights and gender equality within the sector because their work will be legitimized and treated with greater value.

Fifth, many women are at risk of sex trafficking and child sex work in the tourism industry. Forced sex work and child labor are both crimes but are underreported to the police because they are illegal (ILAB 2009, Richter 2012). Decriminalizing sex work may help curb sex trafficking and child sex work which is facilitated by the tourism industry in Malawi because sex workers who witness these illegal activities will be able to more inclined to report it – which is

the case in the Netherlands - rather than fear the police (Mgbako et al. 2017). Therefore, decriminalization may decrease the instances of human rights violations and crimes which are facilitated by the tourism industry.

Sixth, sex in the tourism industry is currently unregulated, which means that the governments cannot collect any taxes or other profits from sex work related businesses in the industry. Many countries that have legalized or decriminalized sex work have embedded sex work into their market for taxation and tourism profit. As such, they collect tax from brothel owners, through health inspections, and by requiring sex workers to get licensed (Goodyear and Weiter 2011). As such they have driven the sex tourism industry out of the margins in order to derive tourism dollars from sex work from both international and local tourism (Mathieson et al. 2016). Decriminalization will allow the government to exercise some regulation over the tourism industry and collect taxes and revenue from sex work related businesses.

Finally, sex workers are not currently able to realize their rights. The constitution guarantees many rights including the right to development for all Malawians: “[I]n terms of human rights and development and that’s something that fundamentally exists in the country because the constitution says we have the human rights and those human rights as opposed to ensure that we develop as a country but we also develop as individual” (Ntaba Interview). Decriminalization will allow for sex workers to realize their constitutional rights and make the state more accountable to all of its population. Currently, the nature of sex in the tourism industry does not allow sex workers to develop themselves by earning a livelihood nor does it allow them to contribute to the development of the country. Therefore, criminalizing sex work ironically undermines the political, social and economic development goals of the country.

Sex work laws in Malawi need to be redressed. Sex work legislation in Malawi’s Penal Code is a transplant from colonial British law impacting the tourism industry. Although many of these transplanted laws are commonly referred to as “bad” or “archaic” laws in Malawi (NSWP 2017), they are also inherently *colonial laws* and highlight the broader issue of the lasting legacy of colonialism in Malawi’s legal system; the British style judges’ wigs and robes still worn by Malawian judges are a visible reminder of this colonial past (Sieff 2017). Many colonial legislative remnants still impact Malawi’s judicial system in a way that marginalizes sex workers. Decriminalization of sex work is one way in which the country can decolonize laws impacting sex workers who support the tourism sector (Himonga and Diallo 2017). It follows

then that decriminalization of sex work is one way in which the government can become accountable for ensuring the rights for all of its citizens.

## CHAPTER 6: CONCLUSIONS

### *Recapitulation of Purpose and Findings*

The purpose of this dissertation was to add to the sparse body of literature focusing on sex work in the tourism industry and criminalization of sex work in Africa using the activities and events surrounding the Pempho Banda et al. case in Dedza, Malawi. It aimed to provide socio-cultural, political, and economic context to sex in the tourism industry in Africa, which is scarce. Chapter 1 was the introductory chapter that provided the background to the case, a statement of the problem, an outline of the methodology, and the conceptual framework of the case. It also included a review of literature in tourism and sex work that is related to the case. Chapter 2 focused on the narrative of the case from the perspective of the actors in the criminal justice system and how these events were formed by the legal and social environment; it revealed that sex workers in Malawi are being persecuted due to colonial laws and that there is no urgency by the elite to redress legislation. Chapter 3 focused on the dominant framing of the case in mass media and the cultural attitudes towards sex workers working in Malawi's tourism sector by the general public. Chapter 4 compared the perspectives of the actors in the criminal justice system to messaging in mass media – including comments from the public. It also examined the role of strategic litigation in advancing the rights of sex workers in the case. Chapter 5 examined what the perspectives among actors in the criminal justice system and in mass media revealed about possibilities for decriminalization of sex work, and what implications this would have for the tourism sector. The insight these chapters provide is important for implementing practical policies addressing sex work and tourism development in Malawi, particularly legal policies that will impact the lived experiences of sex workers. This research was intended to analyze messaging from advocates and mass media, as well as perspectives of the general public, to help us better understand the legal and social status of sex workers in Malawi. It was also designed to examine the linkages between the Malawian sex workers' local socio-economic conditions and global processes.

What I found was that the law had a profound impact on the marginalization of sex workers in Malawi, both in the criminal justice system and in the larger society where they lived. These laws were written in Malawi's Penal Code in the colonial era and carried over in each subsequent administration. The tendency to leave laws such as the offence of living on the earnings of prostitution open to various interpretations, combined with the tendency to

criminalize activities surrounding sex work, contribute to the marginalization of sex workers. Therefore, legal advocates have been promoting policies that end the criminalization of sex work and seek clarification of the law through incremental gains. They have been engaging in media advocacy with a receptive press who reported the issues and legal arguments in the case without sensationalizing sex work or framing the discourse using religiously grounded moral judgment. Although most of the public is socially conservative and most readers commenting on online news stories reacted negatively, I found that many people commenting on online media were either positive or neutral toward sex work and called for legal rights to be extended to all, whether they agreed with sex work or not. Based partly on Malawi's peripheral location in the global political economy, my analysis also determined that – of the three common legislative approaches to sex work – decriminalization is the better option for Malawi and is the option that it is already informally on the path towards. Finally, the entire Pempho Banda et al. case took place in the backdrop of the tourism and hospitality industry making tourism development and linkages between the sex trade and tourism industry central concerns in my analysis.

Some of the themes that emerged in my research included gender, gendered spaces in hospitality locations, religious morals, human rights abuses by the police, police raids, colonial laws, stigmatization and strategic litigation. One of the dominant themes to emerge from my analysis of the public commentary was that of religion as a moral guide and how it may influence legislation. This is in contrast to morality grounded on human rights, which was the logic offered by the actors in the criminal justice system as well as the narrative in mass media. Another primary theme to emerge in my analysis of the story of the case was activists' use of strategic litigation to reverse legal interpretations, as well as build political will to change laws, that had harmed sex workers. The findings suggest that strategic litigation has been a successful way of making small gains for sex workers. It helped sex workers gain rights immediately, rather than in a protracted way. The public activists interviewed showed a clear preference for using strategic litigation, but ultimately, they wanted the laws targeting sex workers to be repealed or elements of it to be decriminalized.

### *Relating to Previous Research*

These findings are broadly in accord with existing literature which contends that the reality of the global tourism industry is that sex work accounts for a substantial portion of

tourism activities, whether proponents of tourism development intended it to or not. It is also in line with research by Kibicho (2012) who confirmed that the multi-faceted relationship between Kenya's sex trade and tourism industry is influenced by culture, economic development, poverty and wealth, and material interests. He called for further research that contextualizes the sex trade in Africa. As such, this study is part of the literature that adds to a more nuanced understanding of the legal and social status of sex workers in the tourism industry in Malawi.

The findings on strategic litigation are also in line with the findings of studies by Ezer and Patel (2018) and that of Kangaude and Mhango (2018). The Ezer and Patel (2018) study argues that the use of strategic litigation to secure rights for marginalized groups in Malawi is useful in creating an opportunity for the narratives of marginalized and affected communities to manifest. Kangaude and Mhango (2018) argues that in spite of Malawi's progressive legal and policy framework, Malawi has not complied with legal and human rights standards. Their study examined the abortion law, which is also derived from English criminal law but is considered a reproductive right much like sex work.

The findings on Malawi's mass media narratives on the Pempho Banda case contrast with previous research by the CASAM 2007 in India, which documented newspapers largely sensationalizing sex work and making moral judgments. However, unlike that study, my research was based only on reactions to this single legal case, not on a broad range of articles and issues about sex workers in Malawi. It also contrasts with a study by Hunt and Hubbard (2015) who found that sex work was presented as immoral and dangerous by the media in South Africa. Their study also concluded that sex workers were criminalized for their actions while client agency was largely obscured. These other studies' findings were more consistent with those shared by the Malawian general public in the commentary section highlighted in my study. However, the findings in the South Africa case and my study were consistent in observing some support for pro-sex work approaches to sex work in some papers, included advocacy for decriminalization of sex work on the basis of human rights and the use of the term "sex work" rather than "prostitution." However, their study differed in that they also used two sets of newspapers and included stories covering several issues in addition to sex work.

### *Limitations of Research*

My study has been primarily concerned with public opinions, mass media messages and narratives from actors in the criminal justice system. The findings of my study are limited to the reactions from the Pempho Banda case. This means we cannot be certain that given a different case or scenario involving sex work, that the framing or public reactions would be similar. Therefore, for a comprehensive picture of views of sex work in Malawi, further analysis would need to be done using other cases and other populations. For example, this analysis does not include the narratives of lawmakers or policymakers themselves, which were beyond the scope of the dissertation.

I should make clear that although it is common practice in feminist research to give voice to the marginalized, I have intentionally focused on the narratives of actors in the criminal justice system and the general public. This should not be taken as an attempt to silence sex workers or not provide them with a voice. Rather, the study was meant to examine the opinions of the elite – which includes the sex worker advocates (although members of FWSA may not readily be identified as elite, they have access to the elite), journalists, and the public who have access to the internet. This is because these are the actors who influence legislation. Therefore, their construction of sex workers and opinions about sex work matters because they influence the policymakers and are likely to have a substantial impact on improving the legal, social and economic status of sex workers. Thus, the only sex workers who were represented in this dissertation were from FSWA, whose representative appeared both as an activist and sex worker.

There were other limitations to my analysis. This analysis deliberately avoided themes focusing on “child sex work” because it is not in fact sex work; rather it is considered sexual exploitation of children (Richter 2012). Similarly, I have not focused on human trafficking because this is beyond the scope of my dissertation. Human trafficking involves the use of coercion, fraud, or deception for the purposes of sex work, and although anti-sex work feminists often conflate human trafficking with sex work (Weitzer 2005), this study treats it as a separate phenomenon. I have emphasized the influence of Christianity on the construction of sex work; however, Malawi is 13 percent Muslim and has members of other faiths (UN 2014). Islam or other faiths may have different influences on the construction of sex work in Malawi. However, Malawian sex workers are predominantly Christian (Chizimba and Malera 2011). Additionally, online participants did not refer to any other religious texts or beliefs, although it stands to reason

that some of the commentators were probably Muslim or members of other faiths who did not mention their faith nor make arguments explicitly grounded in their faith. Therefore, there was no way of knowing how the other religions influenced moral judgments or to what extent from the data gathered. That being said, I should also be clear that one of the other limitations of the study is that user generated comments were not representative of the population of across demographics.

#### Problems arising during the research

A few problems arose during data collection. Although the study was not intended to be an analysis of the views of the sex workers named in the case, attempts were made to interview some of them. However, sex workers in Malawi are a transient population and they often use pseudonyms, thereby making it hard even to locate them. As such, one of the major problems arising during the research was recruiting sex workers who were named in the case. This was a disappointment because having their perspective would have made for a more nuanced narrative analysis, particularly details about the day of arrest and treatment by the police. Perhaps providing them a financial benefit for their time may have assisted recruiting them.

A second problem arose related to transcribing the interviews. Although an automated transcription service was used that was compatible with the Skype telecommunication service, the transcriptions were far less accurate than anticipated. The transcription service gave options for different English accents such as England or US but did not offer any option for Malawian English – or any Anglophone African English accents. This may have resulted in the higher than anticipated errors. This inaccuracy resulted in adding extra days being spent on manually correcting these automated transcriptions.

#### *Implications of the Findings*

This study suggests that there are real possibilities for changes in legislation impacting sex workers in Malawi. It supports the argument for decriminalization of sex work in Malawi and suggests that steps have already been taken towards this, in part through incremental strategic litigation approaches. The study contends that there are members of the general public who support the notion that sex workers have both human and legal rights in spite of the tendency of public opinions to be anti-sex work. This suggests that judgment based on religious

moral grounds may not be insurmountable in spite of Malawi being socially conservative. On the face of it, this would suggest that getting the support of the churches to intervene or sensitize the public may be an important factor in combating both social stigma and repressive legislation. Therefore, advocacy may need to target churches and possibly other religious institutions. The study also suggests that as tourism development is scaled up in Malawi, policies safeguarding sex workers' rights need to be re-examined to mitigate the impact of factors causing their marginalization. The study indicates that mass media news coverage of sex workers in Malawi is not simply sensational reporting, and that it is realistic to expect sex work can be covered in a balanced way when reporters are sensitized.

The study also illuminates the relationship between the sex trade and tourism in Malawi that is not often discussed using the term "sex tourism" by policymakers, advocates, scholars or the public. In part, this is because this term is typically reserved for relationships involving an older White male client, and a young Black female sex worker (Mullings 1999). However, as other studies have shown, sex tourism can occur under various scenarios. This study suggests that since almost all sex work takes place in the tourism and hospitality sector in Malawi, it is appropriate to analyze a sizable portion of the sex trade industry in Malawi through the construct of sex tourism. It stands then that sex in the tourism industry in Malawi facilitates sex work and that sex tourism in Malawi is gendered, racialized and classed. Lastly, my study suggests that sex workers in Malawi, like in other nations in the Global South, are integrated in the neo-liberalism-led global political economy in a way that marginalizes them.

### *Recommendations*

Several recommendations for government and other pro-sex work policymakers emerge from this study:

- It stands to reason that as Malawi scales up its tourism development, sex tourism will expand. Since it is anticipated that sex work will flourish, Malawi needs to enact legislation and policies that continue to move towards decriminalizing sex work.
- Legalization and criminalization have proved to be ineffective. The study recommends a working committee to explore the advantages and disadvantages of decriminalization in Malawi.

- The government ought to immediately clarify the current sex work laws as well as related laws, and not to wait for strategic litigation cases to provide legal protection in the indeterminate future. The creation of a cross-sector law for sex workers through the passage of a single bill which clarifies and decriminalizes sex work is needed.
- Policies be enacted in specific sectors, such as tourism, so that policies about sex work are not limited to HIV/AIDS.
- The government needs to begin the process of decolonizing statutes and legislation that no longer serve the best interests of all of its citizens.

In addition, this study implies these recommendations for sex worker advocates in Malawi:

- Advocates should continue engaging the media through media advocacy. These efforts have proven effective in this case; the media's messaging was consistent with that of the actors in the criminal justice system.
- Advocates should engage with religious leaders in Malawi, particularly Christian leaders, in order to tackle social stigmatization and social marginalization.
- Journalists should make better attempts to reach out to sex workers so that they can provide better context using sex workers' perspectives and so they can report on the impact of such policies on sex workers' lives.
- NGOs and CSOs working on human rights issues should work closer together with women's rights groups if female sex workers are involved.

### *Significance*

Sex work in Malawi has come under public debate due to several cases that have been reported in the press over the past few years. Laws such as the living on the earnings of prostitution and the Rogue and Vagabond laws are used to target sex workers, which leaves them susceptible to abuse and arbitrary arrests (NSWP 2017). The legal status of sex work in the country has become a contentious issue in which some are arguing for increased efforts to criminalize sex work whilst others are advocating for decriminalizing or legalizing sex work. The high court evaluated whether arresting people under these laws and related laws targeting sex workers is constitutional. Three separate but related court cases have led to gains in the legal status of sex workers. The first occurred in 2011 with the Mwanza 11, involving sex workers who were arrested and forced to undergo HIV tests by the government (Moshenberg 2015). They

sued the government and won their case in 2015, when the court ruled that their arrest under the vagrancy laws, as well as their forced testing, was unconstitutional. The second occurred when the living under the earnings of prostitution law was clarified in 2016 through the Pempho Banda case where the court affirmed that sex work was legal. Later, a section of the Rogue and Vagabond laws which was used to target sex workers was declared unconstitutional in the 2017 Mayeso Gwanda case (NSWP 2017). These cases were regarded as victories for the legal rights of sex workers and they advanced public dialogue about sex workers.

In addition, in recent years, Malawian sex workers have begun to organize to take collective action. Sex workers in Malawi have been forming organizations, whereas in the past they would not have done so because Malawi is such a conservative country. Although case by case gains have been made, sex workers are still subject to marginalization by the law and social attitudes. Their activism helps open the space for public dialogue about the treatment of sex workers. However, they still face legal repression and social marginalization. Although the court ruled some of the aforementioned laws unconstitutional, laws such as the living on the earnings of prostitution ultimately require clarification. Additionally, there are other laws that continue to target sex workers. Thereby, sex workers are still vulnerable and the debate about sex workers continues.

My objective is to intervene in this national debate surrounding sex workers by highlighting several complexities and contradictions surrounding sex work in Malawi. My research explores the events, legal environment, media coverage, and public opinion surrounding this case and its relation to the tourism industry. In doing so, I hope to encourage public opinions and policies that are more sex worker-friendly. I also hope to inform policies focusing on the sex trade and sex tourism by demonstrating the linkage between these two spheres in Malawi. Having policies that consider sex workers in the context of the industry in which it largely occurs means that funding for programs, legal expertise and healthcare can be allocated in more suitable and targeted areas. Lack of adequate policies and foresight about the growth or nature of the sex trade in Kenya, as an example, led to that country becoming a major sex tourism destination (Kibicho 2012). Sex tourism has had adverse effects in the developing countries such as Kenya, Thailand and the Philippines (Kibicho 2012, Truong 1990). If Malawi does not aim to become a major sex-tourism destination, it needs to have better policies for sex workers.

This study engages with the perspectives of human rights activists and other actors in the criminal justice system, the elite, the general public, and journalists who contribute to shaping policy in the country. It makes a case for decriminalization as an approach to sex work with the aim of influencing policy towards sex workers in the country. The research is also an act of solidarity with the activism of those fighting to end repression of sex workers and other marginalized groups in the country. My research will be of interest to sociologists, political scientists, socio-legal scholars, social policy scholars, tourism scholars, journalists, policymakers and politicians.

#### Future research

Possible areas for further investigation include examining the framing of media coverage and public opinions expressed in other legal cases or other contexts. Additionally, a general overview of the dominant contrasting narratives and general trends in reporting about sex work would provide us insight on the representation and presentation of sex work and sex workers in Malawi. Another avenue for further study would be research into Chinese temporary workers, who when staying under 90 days are considered tourists, in light of the increase of children of Chinese heritage across the continent. The impact of decriminalization of marijuana on the sex trade in Malawi is another area for further research since a portion of Malawi's tourists come for recreational use of Malawi Gold.

## APPENDICES

### *Appendix I: List of News Media Sources and Comments on News Articles*

#### A. News Media Sources:

1. Aubi, Cassim, “Sex Workers Win Appeal Case”, *Zodiak Malawi Online*, September 12, 2016.  
[www.zodiakmalawi.com](http://www.zodiakmalawi.com)
2. Chilunga, Zawadi, “Malawi Sex Workers Celebrate as Court Quashes Convictions of 19: Not Guilty!”, *Nyasa Times*, September 9, 2016. [www.nyasatimes.com](http://www.nyasatimes.com)
3. Correspondent, CHREAA “Victory for Human Rights in Sex Workers Case”, *CHREAA News Release*, September 19, 2016.  
[www.chreea.org](http://www.chreea.org)
4. Correspondent, CSJNews “Official Faulted for Accusing Sex-Workers of Depleting STI Drugs”, *Centre for Solutions Journalism News*, March 08, 2017. [www.csjnews.com](http://www.csjnews.com)
5. Correspondent, Maravi Post, “Malawi Human Rights Groups Laud Zomba High Court: Sex Workers Case” *Maravi Post*, September 20, 2016. [www.maravipost.com](http://www.maravipost.com)
6. Correspondent, SALC, “Judgment by Zomba High Court on the Interpretation of the Offence of Living on the Earnings of Sex Work”, *SALC News Release*, September 9, 2016.  
[www.southernafricanlitigationcentre.org](http://www.southernafricanlitigationcentre.org)
7. Kamlomo, Gabriel, “Rights Activists Hail Judgment on Sex Workers”, *Zodiak Malawi Online*, September 20, 2016.  
[www.zodiakmalawi.com](http://www.zodiakmalawi.com)
8. Kashoti, Dickson, “Judiciary Fails to refund Sex workers”, *The Daily Times*, September 26, 2017.  
[www.times.mw](http://www.times.mw)
9. Ligokeka, Brian, “Malawi High Court Acquits 19 Sex Workers” *Malawi News Now*, September 13, 2016.  
[www.malawinewsnow.com](http://www.malawinewsnow.com)
10. Malenga, Bright, “High Court Backs Sex Workers, No Arrests for them in Malawi”, *Malawi 24 News*, September 14, 2016.  
[www.malawi24.com](http://www.malawi24.com)
11. Malenga, Bright, “Sex Work is Legal in Malawi: CSOs Hail Court for Backing Sex Workers”, *Malawi 24 News*, September 21, 2016.  
[www.malawi24.com](http://www.malawi24.com)
12. Malikwa, Mercy, “Court Favors 19 Sex Workers”, *The Malawi Nation*, September 9, 2016.  
[www.mwnation.com](http://www.mwnation.com)
13. Monjezo, Tiyese, “Malawi Court Frees 19 Sex Workers”, *Capital Radio Malawi*, September 12, 2016.  
[www.capitalradiomalawi.com](http://www.capitalradiomalawi.com)

B. List of Comments on News Media Reports:

Chilunga, Zawadi, “Malawi Sex Workers Celebrate as Court Quashes Convictions of 19: Not Guilty!”, *Nyasa Times*, September 9, 2016

Kamanga	Elder Sage III
Kwangu	DJ OK
The Analyst	Blessings
Nachisa	Hunga
Tioz	KKilembe
Igabel of Harties	Joka
Munyane	John Kaka
Kwemkhe	Vivian
Kokani	Lewis M

Aubi, Cassim, “Sex Workers Win Appeal Case”, *Zodiak Malawi Online*, September 12, 2016

Clement Snr	Madimbo
Chimwemwe	Kaiser Falcon

Kamlomo, Gabriel, “Rights Activists Hail Judgment on Sex Workers”, *Zodiak Malawi Online*, September 20, 2016

Bravo Bashir Dowd	Sankhan
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Malenga, Bright, “Sex Work is Legal in Malawi: CSOs Hail Court for Backing Sex Workers”, *Malawi 24 News*, September 21, 2016.

Vivian	Lot
Charles	Thomas
Wapaphata	Simon
Benjamin	Michael
Magazino	Bartolomeu
James	Jaques
Samuel	Baluwa
John K	Thabo

Malenga, Bright, “High Court Backs Sex Workers, No Arrests for them in Malawi”, *Malawi 24 News*, September 14, 2016

John Jana	Atusaye
Kelvin	Ada

*Appendix II: List of Interviews*

Chijozi interview: Author's interview with Chikondi Chijozi, CHREAA Deputy Executive Director & Litigation Manager and Victor Mhango, CHREAA Executive Director, Banjul, Gambia, October 10, 2018.

Esterhuizen interview, Author's interview with Tashwill Esterhuizen, SALC LGBTI and Sex Worker Rights Programme Lawyer, December 19, 2018

Memory interview: Author's interview with Memory, FSWA Central Region Coordinator, Lilongwe, Malawi, December 6, 2018.

Maele interview: Author's interview with Fostino Maele, Private Attorney, Blantyre, Malawi, November 15, 2018.

Mizere interview: Author's interview with Agnes Mizere, Independent Journalist, Virginia, USA September 20, 2018

Ntaba interview: Author's interview with Justice Ziona Jane Ntaba, Malawi High Court Judge, Zomba, Malawi, November 13, 2018

Appendix III: Tables and Codebook

A. Tables

Table 1: Tone of Public Commentary about Sex Work

Tone of Comment (Tone):	Number of comments
Negative Tone (ToneNeg)	205
ToneNegPess	51
ToneNegSad	43
ToneNegMock	32
ToneNegStigma	29
ToneNegApathy	22
ToneNegShock	15
ToneNegAngry	13
Positive Tone (TonePos)	101
TonePosJoy	51
TonePosSympathy	16
TonePosAffection	17
TonePosNonJudge	11
TonePosOptimist	6
Neutral Tone (ToneNeut)	64
ToneNeutAmbiguous	21
ToneNeutOther	21
ToneNeutUnintelligent	12
ToneNeutQuestion	6
ToneNeutUnrelated	5

Note: see appendix II for codebook with a description of codes.

Table 2: Overall Sentiments about Sex Work

Overall sentiments about sex work (SWOverall)	Number of comments
SWOverallGood	55
SWOverallBad	99
SWOverallNeu	30

Note: see appendix II for codebook with a description of codes.

## B. Codebook for Tone and Overall Sentiments about Sex Work

**TONE (COMMENTS):** Whether the language used in the comments was negative, positive or neutral.

**ToneNeut:** Comments in which the tone was neither positive nor negative.

- **ToneNeutQuestion:** the tone was neither positive nor negative because they are seeking clarification or asking for more information.
- **ToneNeutUnintelligent:** the tone was neither negative nor positive because they are unintelligible or do not make sense.
- **ToneNeutUnrelated:** the tone was neither positive or negative because they are unrelated to CSW, sex work, or the article.
- **ToneNeutOther:** the tone was neither positive nor negative for any other reason.
- **ToneNeutAmbiguous:** the tone was neither positive nor negative because the comment has a double meaning which could be interpreted as positive nor negative.

**ToneNeg:** Comments in which the tone was negative.

- **ToneNegAngry:** the tone suggests a strong feeling of annoyance, displeasure, or hostility.
- **ToneNegApathy:** the tone suggests little or no interest or emotion in media the attention the sex workers are getting or the story.
- **ToneNegMock:** the tone suggests that the author's intention was be comedic, humorous or mocking.
- **ToneNegPess:** the tone suggests pessimism or a belief that something will never get better or will worsen.
- **ToneNegShock:** the tone suggests horror and fear or is threatening in nature.
- **ToneNegSad:** the tone suggests sentiments of sadness, unhappiness or sorrow.
- **ToneNegStigma:** the tone is disparaging, and depreciatory or suggests that the intent was to lessen the merit or reputation of individuals.

**TonePos:** Comments in which the tone is positive.

- **TonePosNonJudge:** the tone suggests the author is open-minded or willing to allow the existence of opinions or behavior that one does not necessarily agree with.
- **TonePosSympathy:** the tone suggests sentiments of sympathy or exhibits compassion.
- **TonePosOptimist:** the tone is optimistic or suggests a belief that the world/situation can or is already improving.
- **TonePosJoy:** the tone suggests sentiments that are happy and joyous or experiences that are positive or uplifting.
- **TonePosAffection:** the tone suggests fondness or characterized by affection or love.

**SWOverall (Comments):** Comments about overall sentiments about sex work which suggest that sex work is generally good/bad or useful/not useful.

- **SWOverallGood:** Comments suggesting sex work is generally good or useful.
- **SWOverallBad:** Comments suggesting sex work is generally bad or not useful.
- **SWOverallNeu:** Comments suggesting sex work is neither good/bad nor useful/not useful.

## REFERENCES

- "Malawi Sex Workers Alliance Elects National Committee." 2012. *Nyasa Times*, November 8. Retrieved May 5, 2019 (<https://www.nyasatimes.com/malawi-sex-workers-alliance-elects-national-committee/>).
- "Sex Tourists' Warned in Malawi." 2015. *allAfrica.com*, December 31. Retrieved December 28, 2018 (<https://allafrica.com/stories/201512310459.html>).
- "Sex Tourism Booms - White Female Tourists Target Malawi Beach Boys." 2015. *allAfrica.com*, August 2. Retrieved December 28, 2018 (<https://allafrica.com/stories/201508030995.html>).
- The Republic v. Pempho Banda and 18 Others*, (High Court of Malawi Zomba 2016).
- The Republic v. Mayeso Gwanda - Judgment*, (High Court of Malawi 2017).
- 2018, "Police Rescue Five Girls from Sex Trade" *Nyasa Times*, May 20. Retrieved February 20, 2019 (<https://www.nyasatimes.com/police-rescue-five-girls-from-sex-trade>).
- Agozino, Onwubiko. 2014. "Contributions of Africana Scholars to the Theory of Human Rights in Sociology." *Theoria and Praxis: International Journal of Interdisciplinary Thought* 2(1):1-13.
- Andrews, Travis M. 2016, "Malawi Police Arrest HIV Positive Man Paid by Parents to Have Sex with Scores of Young Girls" *The Washington Post*, July 27. Retrieved January 23, 2019 ([http://link.galegroup.com/apps/doc/A459285959/SCIC?u=viva\\_vpi&sid=SCIC&xid=c7631ce0](http://link.galegroup.com/apps/doc/A459285959/SCIC?u=viva_vpi&sid=SCIC&xid=c7631ce0)).
- Aubi, Cassim. 2016, "Sex Workers Win Appeal Case " *Zodiak Malawi Online*, September 12. Retrieved February 13, 2019 (<https://www.zodiakmalawi.com/top-stories/sex-workers-win-appeal-case>).
- Babbie, Earl. 2010. *The Practice of Social Research*. Belmont, CA: Wadsworth Cengage Learning.
- Baird, Sarah and Berk Ozler. 2016. "Transactional Sex in Malawi." Pp. 165-87 in *The Oxford Handbook of the Economics of Prostitution*, edited by S. Cunningham and M. Shah. New York: Oxford University Press.
- Banda, Chikosa and Anneke Meerkotter. 2015. "Examining the Constitutionality of Rogue and Vagabond Offences in Malawi." *Using the Courts to Protect Vulnerable People: Perspectives from the Judiciary and Legal Profession in Botswana, Malawi, and Zambia*. Southern African Litigation Centre, Johannesburg, South Africa.
- Becker, Anne. 2017. "Moral Responsibility and Speaking to the 'Dark Side of Human Rights'." *South African Journal of Higher Education* 31(6):45-60. doi: 10.20853/31-6-1627.
- Bell, Duncan. 2014. "What Is Liberalism?." *Political Theory* 42(6):682-715. doi: 10.1177/0090591714535103.
- Bello, Felix G., Neil Carr, Brent Lovelock and Feifei Xu. 2017. "Local Residents' Perceptions of Socio-Cultural Impacts of Tourism in Mangochi, Malawi." *Advances in Hospitality and Tourism Research* 5(1):1-22.
- Bello, Felix G., Brent Lovelock and Neil Carr. 2018. "Enhancing Community Participation in Tourism Planning Associated with Protected Areas in Developing Countries: Lessons from Malawi." *Tourism & Hospitality Research* 18(3):309-20. doi: 10.1177/1467358416647763.
- Beran, Katie. 2012. "Revisiting the Prostitution Debate: Uniting Liberal and Radical Feminism in Pursuit of Policy Reform." *Law and Inequality: A Journal of Theory and Practice* 30(1):19-56.
- Bergman, Manfred Max. 1998. "A Theoretical Note on the Differences between Attitudes, Opinions, and Values." *The Swiss Political Science Review* 4(2):81-93. doi: <https://doi.org/10.1002/j.1662-6370.1998.tb00239.x>.
- Bianchi, Raoul V. 2002. "Towards a New Political Economy of Global Tourism." Pp. 265-99 in *Tourism and Development: Concepts and Issues*, edited by R. Sharpley and D. J. Telfer. Clevedon: Channel View Publications.
- Bianchi, Raoul V. 2009. "The 'Critical Turn' in Tourism Studies: A Radical Critique." *An International Journal of Tourism Space, Place and Environment* 11:484-504.

- Bindel, Julie. 2017, "Why Prostitution Should Never Be Legalised" *the Guardian*, October 11. Retrieved March 6, 2019 (<https://www.theguardian.com/commentisfree/2017/oct/11/prostitution-legalised-sex-trade-pimps-women>).
- Bisika, Thomas. 2009. "Sexual and Reproductive Health and HIV/AIDS Risk Perception in the Malawi Tourism Industry." *Malawi Medical Journal* 21(2):75 - 80.
- Booth, David, Diana Cammack, Jane Harrigan, Edge Kanyongolo, Mike Mataure and Naomi Ngwira. 2006. "Drivers of Change and Development in Malawi. London: Overseas Development Institute." Vol. 261. London, United Kingdom: Overseas Development Institute.
- Brooks, Andrew and Alex Loftus. 2016. "Africa's Passive Revolution: Crisis in Malawi." *Transactions of the Institute of British Geographers* 41(3):258-72. doi: 10.1111/tran.12120.
- Bureau of International Labor Affairs. 2009. "US Department of Labor's 2008 Findings on the Worst Forms of Child Labor - Malawi." Washington DC: US Department of Labor's Bureau of International Labor Affairs.
- Caldwell, Mark. 2016, "HIV-Infected Man Sentenced to Two Years over Ritual Sex in Malawi" *allAfrica.com* November 23. Retrieved January 23, 2019 ([http://link.galegroup.com/apps/doc/A471096359/STND?u=viva\\_vpi&sid=STND&xid=b4afdac8](http://link.galegroup.com/apps/doc/A471096359/STND?u=viva_vpi&sid=STND&xid=b4afdac8)).
- Carballo, Marita and Esteban López-Escobar. 2018. "Communication, Public Opinion, and Democracy: New Challenges." *Communication & Society* 31(4):121-34. doi: 10.15581/003.31.4.121-134.
- Carley, Kathleen M. 1990. "Content Analysis." Pp. 725-30 in *The Encyclopedia of Language and Linguistics*, Vol. 2, edited by A. Ron and J. Simpson. Edinburgh, Scotland: Pergamon Press.
- Carmichael, Calum. 2012. "Legal and Ethical Reflection on Genesis 18 and 19." Pp. 101-12 in *Universalism and Particularism at Sodom and Gomorrah: Essays in Memory of Ron Pirson* edited by S. McKenzie. Atlanta, GA: Society of Biblical Literature.
- Carr, Neil. 2016. "Sex Tourism: Reflections and Potential Future Directions." *Tourism Recreation Research* 41(2):188-89.
- Carter, Simon and Stephen Clift. 2010. "Tourism, International Travel and Sex: Themes and Research." Pp. 1-19 in *Tourism and Sex: Culture, Commerce and Coercion*, edited by S. Clift and S. Carter. Hampshire, United Kingdom: Cengage Learning.
- Center for Advocacy on Stigma and Marginalization. 2007. "Beyond Vice and Victimhood: Content Analysis of Media Coverage on the Issues of Sex Workers." Maharashtra, India: Sampada Grameen Mahila Sanstha (SANGRAM).
- Centre for Human Rights Education Advice and Assistance. 2016. "Victory for Human Rights in Sex Workers Case ". Lilongwe, Malawi: Centre for Human Rights Education Advice and Assistance.
- Centre for Human Rights Education Advice and Assistance. 2019, "About ", Blantyre, Malawi. Retrieved February 26, 2019 (<http://chreaa.org/about/>).
- Centre for Solutions Journalism. 2017, "Official Faulted for Accusing Sex Workers of Depleting STI Drugs" *Centre for Solutions Journalism*, March 8: Centre for Solutions Journalism. Retrieved October 15, 2018 (<https://csjnews.org/2017/03/08/malawi-official-faulted-accusing-sex-workers-depleting-sti-drugs/>).
- Chayes, Abram. 1976. "The Role of the Judge in Public Law Litigation." *Harvard Law Review* 89(7):1281-316. doi: 10.2307/1340256.
- Chikonzo, Kelvin. 2017. "Subaltern Voices/Interest in the Contemporary Protest Theatre in Zimbabwe." *African Research and Documentation* (131):60-75.
- Chilembwe, James Malitoni. 2014. "Examination of Socio-Cultural Impacts of Tourism in Chembe Village in Mangochi District - Malawi." *The International Journal of Business Quantitative Economics and Applied Management Research* 1(1):61-92.
- Chili, Simon Nsizwazikhona. 2015. "Perceptions and Attitudes of the Community Towards Tourism Impacts and Sustainable Development. The Case Study of Empophimeni in Pietermaritzburg (South Africa)." *Problems and Perspectives in Management* 13(3-1):151-59.

- Chilunga, Zawadi. 2016, "Malawi Sex Workers Celebrate as Court Quashes Convictions of 19: Not Guilty!" *Nyasa Times*, September 9. Retrieved October 8, 2018 (<https://www.nyasatimes.com/malawi-sex-workers-celebrate-court-quashes-convictions-19-not-guilty/>).
- Chizimba, Robert Mthenga and Grace Tikambenji Malera. 2011. "Counting the Uncatchables!: Report of the Situation Analysis of the Magnitude, Behavioural Patterns, Contributing Factors, Current Interventions and Impact of Sex Work in HIV Prevention in Malawi." Family Planning Association of Malawi.
- Choondassery, Yesudas. 2017. "Rights-Based Approach: The Hub of Sustainable Development." *Discourse and Communication for Sustainable Education* 8(2):17-23. doi: 10.1515/dcse-2017-0012.
- Christie, Iain, Eneida Fernandes, Hannah Messerli and Louise Twining-Ward. 2014. *Tourism in Africa: Harnessing Tourism for Growth and Improved Livelihoods*. Washington DC: World Bank and Agence Française de Développement.
- Clelland, Donald A. 2013. "Unpaid Labor as Dark Value in Global Commodity Chains." Pp. 72-87 in *Gendered Commodity Chains: Seeing Women's Work and Households in Global Production*, edited by W. A. Dunaway. Redwood City, CA: Stanford University Press.
- Clift, Stephen and Simon Carter. 2010. "Tourism and Sex: Critical Issues and New Directions." Pp. 265-82 in *Tourism and Sex: Culture, Commerce and Coercion* edited by S. Clift and S. Carter. Hampshire, United Kingdom: Cengage Learning.
- Cohen, Jennifer. 2018. "What's "Radical" About [Feminist] Radical Political Economy?". *Review of Radical Political Economics* 50(4):716.
- Colgan, Jeff D. and Robert O. Keohane. 2017. "The Liberal Order Is Rigged." *Foreign Affairs (Council on Foreign Affairs)*, May 5, pp. 36-44.
- Comte, Jacqueline. 2014. "Decriminalization of Sex Work: Feminist Discourses in Light of Research." *Sexuality & Culture* 18(1):196-217. doi: 10.1007/s12119-013-9174-5.
- Davidson, Julia O'Connell and Jacqueline Sanchez Taylor. 1999. "Fantasy Island: Exploring the Demand for Sex Tourism." Pp. 37-54 in *Sun, Sex, and Gold: Tourism and Sex Work in the Caribbean*, edited by K. Kempadoo. Lanham, MD: Rowman & Littlefield Publishers.
- Demone, Bradley. 2016. "LGBT Rights in Malawi: One Step Back, Two Steps Forward? The Case of R V Steven Monjeza Soko and Tiwonge Chimbalanga Kachepea." *Journal of African Law* 60(3):365-87. doi: 10.1017/S0021855316000127.
- Dieke, Peter U.C. 2000. *The Political Economy of Tourism Development in Africa (Tourism Dynamics)*, Edited by P. U. C. Dieke. New York: Cognizant Communication Corp.
- Dieke, Peter U.C. 2003. "Tourism in Africa's Economic Development: Policy Implications." *Management Decision* 41(3):287-95.
- Dionne, Kim Yi and Boniface Dulani. 2016, "This One Graph Shows the Biggest Threat to LGBT Rights in Malawi" *Washingtonpost.com*, March 1. Retrieved February 8, 2019 ([http://link.galegroup.com/apps/doc/A444806427/AONE?u=viva\\_vpi&sid=AONE&xid=dca8e579](http://link.galegroup.com/apps/doc/A444806427/AONE?u=viva_vpi&sid=AONE&xid=dca8e579)).
- Dulani, Boniface, Gift Sambo and Kim Yi Dionne. 2016. "Good Neighbours? Africans Express High Levels of Tolerance for Many, but Not for All " Vol. 74. Cape Town, South Africa: Afrobarometer.
- Dunaway, Wilma A. 2014. "Bringing Commodity Chain Analysis Back to Its World-Systems Roots: Rediscovering Women's Work and Households." *Journal of World-Systems Research* 20(1):64-86. doi: 10.5195/JWSR.2014.576.
- Dworkin, Andrea. 1993. "Prostitution and Male Supremacy ". *Michigan Journal of Gender and Law* 1(1):1-12.
- Ellet, Rachel. 2014. "Politics of Judicial Independence in Malawi." Beloit: Freedom House.
- Englund, Harri. 2000. "The Dead Hand of Human Rights: Contrasting Christianities in Post-Transition Malawi." *The Journal of Modern African Studies* 38(4):579-603.

- Erzikova, Elina and Edgar Simpson. 2018. "When the Gated Misbehave: Online Reader Comments on Anthony Weiner's Sexting Scandal." *Journalism Practice* 12(9):1148-64. doi: 10.1080/17512786.2017.1359653.
- Escobar, Arturo. 1997. "The Making and Unmaking of the Third World through Development." Pp. 85-93 in *The Post-Development Reader*, edited by M. Rahnema and V. Bawtree. London, United Kingdom: Zed Books.
- Ezer, Tamar and Priti Patel. 2018. "Strategic Litigation to Advance Public Health." *Health and Human Rights: An International Journal* 20(2):149-60.
- Fereday, Jennifer and Eimear Muir-Cochrane. 2006. "Demonstrating Rigor Using Thematic Analysis: A Hybrid Approach of Inductive and Deductive Coding and Theme Development." *International Journal of Qualitative Methods* 5(1):80-92. doi: 10.1177/160940690600500107.
- Foley, Ellen E. 2017. "Regulating Sex Work: Subjectivity and Stigma in Senegal." *Culture, Health and Sexuality* 19(1):50-63. doi: 10.1080/13691058.2016.1190463.
- Forster, Peter G. 2000. "Prostitution in Malawi and the HIV/AIDS Risk." *Nordic Journal of African Studies* 9(1):1-19.
- Foucault, Michel. 1978. *The History of Sexuality: Volume I: An Introduction*. New York: Random House.
- Freeland, Edward P. 2015. "Public Opinion: Social Attitudes." Pp. 562-68 in *International Encyclopedia of the Social and Behavioral Sciences*, edited by J. D. Wright. Oxford: Elsevier.
- Freidus, Andrea Lee. 2017. "Unanticipated Outcomes of Voluntourism among Malawi's Orphans." *Journal of Sustainable Tourism* 25(9):1306-21. doi: 10.1080/09669582.2016.1263308.
- Garcia-Rodrigo, Candice A. 2008. "An Analysis of an Alternative to the Radical Feminist Position on the Institution of Marriage." *Journal of Law and Family Studies* 11:113-31.
- Gartner, Candice and Judith Cukier. 2011. "Is Tourism Employment a Sufficient Mechanism for Poverty Reduction? A Case Study from Nkhata Bay, Malawi." *Current Issues in Tourism* 15(6):1-18. doi: 10.1080/13683500.2011.629719.
- Gerassi, Lara. 2015. "A Heated Debate: Theoretical Perspectives of Sexual Exploitation and Sex Work." *Journal of Sociology & Social Welfare* 42(4):79-100.
- Gilman, Lisa. 2004. "The Traditionalization of Women's Dancing, Hegemony, and Politics in Malawi." *Journal of Folklore Research, Vol. 41, No. 1*, 41(1):33-60.
- Global Network of Sex Work Projects. 2011. "PEPFAR and Sex Work." *Briefing Paper*. 1. Edinburgh, Scotland: Global Network of Sex Work Projects.
- Global Network of Sex Work Projects. 2017. "Female Sex Workers Alliance (FSWA)". Edinburgh, Scotland: Global Network of Sex Work Projects (NSWP). Retrieved January 26, 2019 (<https://www.nswp.org/members/fswa-female-sex-workers-association>).
- Gloppen, Siri. 2005. "Public Interest Litigation, Social Rights and Social Policy." Paper presented at the Arusha Conference: New Frontiers of Social Policy, December 12-15, Arusha, Tanzania.
- Gloppen, Siri and Fidelis Edge Kanyongolo. 2007. "Courts and the Poor in Malawi: Economic, Marginalization, Vulnerability, and the Law." *International Journal of Constitutional Law* 5(2):258-89.
- Goodyear, Michael and Ronald Weiter. 2011. "International Trends in the Control of Services." Pp. 16-30 in *Policing Pleasure: Sex Work, Policy and the State in Global Perspective*, edited by S. Dewey and P. Kelly. New York: New York University Press.
- The Penal Code, Article Chapter 7:01 (1930).
- Government of Malawi. 2011. "National Tourism Policy for Malawi." Pp. 1-25. Lilongwe, Malawi: Department of Tourism.
- Government of Malawi. 2014. "Dedza District Social Economic Profile 2013 - 2018" Pp. 1-158: United Nations Development Programme.
- Government of Malawi. 2017. "Draft National Tourism Policy." Pp. 1-35. Lilongwe, Malawi: Department of Tourism.

- Green, Belinda, Timothy J. Scrase and Ruchira Ganguly-Scrase. 2017. "Beach Boys Do It Too: Subculture and Commoditised Desire in a Transnational Tourist Site in Kerala, South India." *Asian Studies Review* 41(1):99-116. doi: 10.1080/10357823.2016.1264364.
- Gwede, Wangwa. 2017. "Legalise Prostitution, Malawi MP Suggests: 'Many People Depending on Sex Trade' " *Nyasa Times*, December 1: Nyasa Times. Retrieved March 10, 2019 (<https://www.nyasatimes.com/legalise-prostitution-malawi-mp-suggests-many-people-depending-sex-trade>).
- Habitat III. 2016, "Speakers, Zione Ntaba" *Urban Rules and Legislation*, Quito, Ecuador: The United Nations Conference on Housing and Sustainable Urban Development. Retrieved Feb 29, 2019 (<http://habitat3.org/the-conference/programme/speakers/zione-ntaba/>).
- Hall, Micheal C. and Hazel Tucker. 2004. "An Introduction." Pp. 1-24 in *Tourism and Postcolonialism: Contested Discourse, Identities and Representatives*, edited by M. C. Hall and H. Tucker. New York: Routledge.
- Haltom, William and Michael McCann. 2004. "Framing the Food Fights: How Mass Media Matter for Public Interest Litigation." Pp. 1-31 in *Western Political Science Association Annual Meeting*. Portland, OR: Western Political Science Association.
- Harrill, Rich. 2004. "Residents' Attitudes Towards Tourism Development: A Literature Review with Implications for Tourism Planning." *Journal of Planning Literature* 18(3):251-26. doi: <https://doi.org/10.1177/0885412203260306>.
- Harrison, David. 2015. "Development Theory and Tourism in Developing Countries: What Has Theory Ever Done for Us?". *International Journal of Asia Pacific Studies* 11(1):53-82.
- Henslin, James M. 2014. *Social Problems: A Down-to-Earth Approach*. Edwardsville, IL: Pearson Publishing.
- Hesse-Biber, Sharlene 2014. "What Is Feminist Research." in *Feminist Research Practice: A Primer*, edited by S. N. Hesse-Biber. Thousand Oaks, CA: Sage Publications Inc.
- Himonga, Chuma and Fatimata Diallo. 2017. "Decolonisation and Teaching Law in Africa with Special Reference to Living Customary Law." *Potchestroom Electronic Law Journal* 20:1-19. doi: <https://doi.org/10.17159/1727-3781/2017/v20i0a3267>
- hooks, bell. 2000. "Feminist Politics: Where We Stand." Pp. 37-39 in *Women's Voices, Feminist Visions: Classic and Contemporary Readings*, edited by S. Shaw and J. Lee. New York: McGraw Hill
- Horn, Jessica. 2010. "Christian Fundamentalisms and Women's Rights in the African Context: Mapping the Terrain." Toronto, Canada: Association for Women's Rights in Development (AWID)
- Horn, Jessica. 2016. "The Devil Is in the Details: At the Nexus of Development, Women's Rights, and Religious Fundamentalisms." Toronto, Canada: Association for Women's Rights in Development.
- Hunt, Sally and Beatrice Hubbard. 2015. "The Representation of Sex Workers in South African Media: Danger, Morals and Human Rights." *Stellenbosch Papers in Linguistics Plus* 46:25-49. doi: <http://dx.doi.org/10.5842/46-0-618>.
- International Labour Office. 1998. *The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia*, Edited by L. L. Lim. Geneva, Switzerland: International Labour Office,.
- International Monetary Fund. 2017. "Malawi Economic Development Document " Vol. 17/184. Washington DC: International Monetary Fund.
- Jacobs, Jessica. 2010. *Sex, Tourism and the Postcolonial Encounter: Landscapes of Longing in Egypt*. Burlington, VT: Ashgate.
- Jeffreys, Sheila. 2009. *The Industrial Vagina: The Political Economy of the Global Sex Trade*. New York: Routledge.
- Joint United Nations Programme on HIV/AIDS. 2015. *Unaid Terminology Guidelines*. Geneva, Switzerland: Joint United Nations Programme on HIV/AIDS.
- Kamanga, Grace and Felix G. Bello. 2018. "Exploring Corporate Social Responsibility (Csr) Adoption in the Tourism Industry: The Case of Malawi ". *Tourism Review International* 22(2):117-30. doi: 10.3727/154427218X15319286372270.

- Kamiyala, Kondwani. 2017, "Gwanda: Vendor Who Changed the Law" *The Malawi Nation*, January 12. Retrieved February 20, 2019 (<https://mwnation.com/gwanda-vendor-who-changed-the-law/>).
- Kamlomo, Gabriel. 2016, "Rights Activists Hail Judgment on Sex Workers" *Zodiak Malawi Online*, September 20. Retrieved September 13, 2018 (<https://zodiakmalawi.com/malawi-national-news/rights-activists-hail-judgment-on-sex-workers>).
- Kampoor, Ilan. 2005. "Participatory Development, Complicity and Desire." *Third World Quarterly* 26(8):1203-20.
- Kangaude, Godfrey Dalitso and Chisale Mhango. 2018. "The Duty to Make Abortion Law Transparent: A Malawi Case Study." *International Journal of Gynecology and Obstetrics* 143(3):409-13. doi: doi:10.1002/ijgo.12630.
- Kanyongolo, Edge. 2006. *Malawi: Justice Sector and the Rule of Law: A Review by Afrimap and Open Society Initiative for Southern Africa*. Johannesburg, South Africa: Open Society Foundation.
- Karimi, Faith. 2012, "Malawian Women Protest after Attacks for Wearing Pants, Miniskirts" *CNN*, January 1. Retrieved January 31, 2019 ([http://link.galegroup.com/apps/doc/A277606713/GIC?u=viva\\_vpi&sid=GIC&xid=05564d40](http://link.galegroup.com/apps/doc/A277606713/GIC?u=viva_vpi&sid=GIC&xid=05564d40)).
- Kashoti, Dickson. 2017, "Judiciary Fails to Refund Sex Workers" *The Daily Times*, September 26. Retrieved September 29, 2019 ([www.times.mw/judiciary-fails-to-refund-sex-workers/](http://www.times.mw/judiciary-fails-to-refund-sex-workers/)).
- Katz, Daniel. 1966. "Attitude Formation and Public Opinion." *The ANNALS of the American Academy of Political and Social Science* 367(1):150-62. doi: 10.1177/000271626636700116.
- Kempadoo, Kamala. 1999. "Continuities and Change: Five Centuries of Prostitution in the Caribbean." Pp. 3-33 in *Sun, Sex, and Gold: Tourism and Sex Work in the Caribbean*, edited by K. Kempadoo. Lanham, MD: Rowman & Littlefield Publishers.
- Kerrigan, Deanna, Caitlin E. Kennedy, Ruth Morgan-Thomas, Sushena Reza-Paul, Peninah Mwangi, Kay Thi Win, Allison McFall, Virginia A. Fonner and Jennifer Butler. 2015. "A Community Empowerment Approach to the HIV Response among Sex Workers: Effectiveness, Challenges, and Considerations for Implementation and Scale-Up." *The Lancet* 385(9963):172-85. doi: [https://doi.org/10.1016/S0140-6736\(14\)60973-9](https://doi.org/10.1016/S0140-6736(14)60973-9).
- Khamula, Owen. 2015, "Catholic Bishop Says Gays Are Horrible Sinners - 'Malawi Isn't Sodom and Gommorah'" *Nyasa Times* December 22. Retrieved February 19, 2019 ([https://infoweb-newsbank-com.ezproxy.lib.vt.edu/apps/news/openurl?ctx\\_ver=z39](https://infoweb-newsbank-com.ezproxy.lib.vt.edu/apps/news/openurl?ctx_ver=z39)).
- Khamula, Owen. 2016, "Malawi NGO Board Warns CSOs, 400 Face Ban" *allAfrica.com*, March 13. Retrieved February 19, 2019 ([http://link.galegroup.com/apps/doc/A449328377/STND?u=viva\\_vpi&sid=STND&xid=340f8778](http://link.galegroup.com/apps/doc/A449328377/STND?u=viva_vpi&sid=STND&xid=340f8778)).
- Khamula, Owen. 2017, "Police, Immigration Authorities Net 56 Illegal Lags from Somalia" *Nyasa Times*, April 9. Retrieved February 20, 2019 (<https://www.nyasatimes.com/police-immigration-authorities-net-56-illegal-lags-somalia>).
- Kibicho, Wanjohi 2012. *Sex Tourism in Africa: Kenya's Booming Industry*. Burlington, VT: Ashgate Publishing.
- Kim, Jong Myoung, Zae Myung Kim and Kwangjo Kim. 2016. "An Approach to Spam Comment Detection through Domain-Independent Features." Pp. 273-76 in *2016 International Conference on Big Data and Smart Computing (BigComp)*. Hong Kong, China: International Conference on Big Data and Smart Computing (BigComp).
- Kishindo, Paul. 1995. "Sexual Behaviour in the Face of Risk: The Case of Bar Girls in Malawi's Major Cities." *Health Transition Review* 5:153-60.
- Krishnan, Jayanth K. 2001. "Public Interest Litigation in a Comparative Context." *Buffalo Public Interest Law Journal* 20(2001/02):19-99.
- Lakkimsetti, Chaitanya. 2014. "'HIV Is Our Friend': Prostitution, Biopower, and the State in Postcolonial India." *Signs: Journal of Women in Culture and Society* 40(1):201-26. doi: 10.1086/676898.

- Lancaster, Kathryn Elizabeth, Kimberly A. Powers, Thandie Lungu, Pearson Mmodzi, Mina C. Hosseinipour, Katy Chadwick, Vivian F. Go, Brian W. Pence, Irving F. Hoffman and William C. Miller. 2016. "The HIV Care Continuum among Female Sex Workers (FSW): A Key Population in Lilongwe, Malawi." *PLoS One* 11(1):1-15. doi: 10.1371/journal.pone.0147662.
- Lepp, Andrew. 2008. "Attitudes Towards Initial Tourism Development in a Community with No Prior Tourism Experience: The Case of Bigodi, Uganda." *Journal of Sustainable Tourism* 16(1):5-22.
- LexisNexis. 2019, "About Lexis Nexis - Corporate Responsibility: Advancing the Rule of Law in Southern Africa", London, United Kingdom: LexisNexis. Retrieved Feb 21, 2019 (<http://www.lexisnexis.co.uk/en-uk/about-us/corporate-responsibility/salc.page>).
- Ligoekka, Brian. 2016, "Malawi High Court Acquits 19 Sex Workers" *Malawi News Now*, September 13. Retrieved March 1, 2018 (<http://malawinewsnow.com/2016/09/malawi-high-court-acquits-19-sex-workers/>).
- Loewenstein, Antony. 2015, "U.S. Evangelicals in Africa Put Faith into Action but Some Accused of Intolerance" *the Guardian*, March 18.: Guardian News Retrieved March 1, 2018 (<https://www.theguardian.com/world/2015/mar/18/us-evangelicals-africa-charity-missionaries-homosexuality>).
- Logan, Carolyn and Michael Bratton. 2006. "The Political Gender Gap in Africa: Similar Attitudes, Different Behaviors " *Afrobarometer Working Papers*. 58. Cape Town, South Africa: Afrobarometer.
- Loka, Chris. 2019, "Millions Set to Watch Presidential Running Mates Debate on Zodiak " *Nyasa Times*, March 6. Retrieved March 10, 2019 (<https://www.nyasatimes.com/millions-set-to-watch-presidential-running-mates-debate-on-zodiak>).
- Lutnick, Alexandra and Deborah Cohan. 2009. "Criminalization, Legalization or Decriminalization of Sex Work: What Female Sex Workers Say in San Francisco, USA." *Reproductive Health Matters* 17(34):38-46. doi: 10.1016/S0968-8080(09)34469-9.
- MacCannell, Dean. 1999. *The Tourist: A New Theory of the Leisure Class*. Berkeley, CA: University of California Press.
- MacKinnon, Catharine. 1993. "Prostitution and Civil Rights." *Michigan Journal of Gender & Law* 1(1):13-31.
- Maconis, John J. 2015. *Social Problems*. Boston, MA: Pearson Publishing.
- Maele, Fostino. 2016. "Review Case Number 58 of 2016 (Being Dedza Fourth Grade Magistrate Criminal Case No 142 of 2016 before H/W Kalako) between Republic and Pempho Banda and 18 Others: Skeleton Arguments." Zomba, Malawi: High Court Zomba District Registry.
- Magombo, Alice and Christian M. Rogerson. 2012. "The Evolution of the Tourism Sector in Malawi." *Africa Insight* 42(2):46-65.
- Magombo, Alice, Christian M. Rogerson and Jayne M. Rogerson. 2017. "Accommodation Services for Competitive Tourism in Sub-Saharan Africa: Historical Evidence from Malawi." *Bulletin of Geography. Socio-economic Series* 38(38):73-92. doi: <https://doi.org/10.1515/bog-2017-0035>.
- Malawi Human Rights Commission. 2006. *Cultural Practices and Their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi*. Lilongwe, Malawi: Malawi Human Rights Commission.
- Malawi Judiciary. 2019, "About the Malawi Judiciary", Chichiri, Malawi: Malawi Judiciary. Retrieved Jan 25 2019 (<https://www.judiciary.mw/aboutus#>).
- Malenga, Bright. 2016a, "High Court Backs Sex Workers, No Arrests for Them in Malawi" *Malawi 24 News*, September 14. Retrieved March 1, 2018 (<https://malawi24.com/2016/09/14/high-court-backs-sex-workers-no-arrests-malawi/>).
- Malenga, Bright. 2016b, "Sex Work Is Legal in Malawi: Csos Hail Court for Backing Sex Workers" *Malawi 24 News*, September 21. Retrieved March 1, 2018 (<https://malawi24.com/2016/09/21/sex-work-legal-malawi-csos-hail-court-backing-sex-workers/amp/>).

- Malikwa, Mercy. 2016, "Court Favours 19 Sex Workers" *Malawi Nation*, September 9. Retrieved March 1, 2018 (<http://mwnation.com/court-favours-19-sex-workers/>).
- Maravi Post. 2016, "Malawi Human Rights Groups Laud Zomba High Court: Sex Workers Case" *Maravi Post*, September 20. Retrieved March 1, 2018 ([http://www.maravipost.com/malawi-human-rights-groups-laud-zomba-high-court-sex-workers-case/?amp\\_markup=1](http://www.maravipost.com/malawi-human-rights-groups-laud-zomba-high-court-sex-workers-case/?amp_markup=1) ).
- Mathieson, Ane, Easton Branam and Anya Noble. 2016. "Prostitution Policy: Legalization, Decriminalization and the Nordic Model." *Seattle Journal for Social Justice* 14(2):367-468.
- Matthes, Jörg. 2010. "Mass Media and Public Opinion: Manipulating or Enlightening?" Paper presented at the Dialogue on Science, Engleberg, Switzerland. Retrieved Feb 12, 2019 (<https://www.researchgate.net/publication/267300288>).
- May, Vivian M. 2015. "Intersectionality." in *Women's Voices, Feminist Visions: Classic and Contemporary Readings*, edited by S. M. Shaw and J. Lee. New York: McGraw Hill.
- Mbaiwa, Joseph E. and Michael B.K. Darkoh. 2009. "The Socio-Economic Impacts of Tourism in the Okavango Delta Botswana." in *Sustainable Tourism in Southern Africa: Rural Communities and Natural Resources in Transition*, edited by J. Saarinen, F. Becker, H. Manwa and D. Wilson. Bristol, United Kingdom: Channel View Publications.
- Mbewe, Safari 2015. "Universal Periodic Review of Malawi." Geneva, Switzerland: Sexual Rights Initiative.
- McCracken, John. 2012. *A History of Malawi 1859–1966*. Woodbridge, United Kingdom: James Curry
- McNamara, Thomas. 2014. "Not the Malawi of Our Parents: Attitudes toward Homosexuality and Perceived Westernisation in Northern Malawi." *African Studies* 73(1):84-106.
- McNeish, Hannah. 2016, "Malawi's Fearsome Chief, Terminator of Child Marriages" *Al Jazeera*, May 16. Retrieved January 24, 2019 (<https://www.aljazeera.com/indepth/features/2016/03/malawi-fearsome-chief-terminator-child-marriages-160316081809603.html>).
- Meredith, Martin. 2013. *The State of Africa: A History of the Continent since Independence*. London, United Kingdom: Simon and Schuster.
- Meriläinen, Niina and Marita Vos. 2011. "Framing Issues in the Public Debate: The Case of Human Rights." *Corporate Communications, an International Journal* 16(4):293-310. doi: 10.1108/13563281311294164.
- Mgbako, Chi Adanna. 2016. *To Live Freely in This World: Sex Worker Activism in Africa*. New York: New York University Press
- Mgbako, Chi Adanna, Katherine Glenn Bass, Erin Bundire, Mehak Jamil, Jere Keys and Lauren Melkus. 2017. "The Case for Decriminalization of Sex Work in South Africa." *Georgetown Journal of International Law* 44(1423-1454).
- Miniwatts Marketing Group. 2019, "Internet Users Statistics for Africa", Bhopal, India: [www.internetworldstats.com](http://www.internetworldstats.com). Retrieved February 10, 2019 (<https://www.internetworldstats.com/stats1.htm>).
- Mkandawire-Valhmu, Lucy, Claire Wendland, Patricia E. Stevens, Peninnah M. Kako, Anne Dressel and Jennifer Kibicho. 2013. "Marriage as a Risk Factor for HIV: Learning from the Experiences of HIV-Infected Women in Malawi." *Global Public Health* 8(2):187-201. doi: 10.1080/17441692.2012.761261.
- Mkhalipi-Manyungwa, Kondwani. 2017, "Malawi MP Demands Legalisation of Prostitution " *Malawi 24 News*, December 2. Retrieved March 10, 2019 (<https://malawi24.com/2017/12/02/malawi-mp-demands-legalisation-prostitution>).
- Mogha, Solister. 2013, "Malawi Swears in New Chief Justice and 5 More Judges" *Africa News Service*, July 10. Retrieved May 3, 2019 ([http://link.galegroup.com/apps/doc/A336314788/ITOF?u=viva\\_vpi&sid=ITOF&xid=769a3c99](http://link.galegroup.com/apps/doc/A336314788/ITOF?u=viva_vpi&sid=ITOF&xid=769a3c99)).
- Monjeza, Tiyese. 2016, "Malawi Court Frees 19 Sex Workers " *Capital Radio Malawi*, September 12. Retrieved March 1, 2018 (<https://www.capitalradiomalawi.com/index.php/blog/local-news/capital-news/item/6730-malawi-court-frees-19-sex-workers>).

- Moshenberg, Dan 2015, "Eleven Malawi Sex Workers Win a Victory for Women's Rights Everywhere!". Retrieved October 10, 2018 (<http://www.womeninandbeyond.org/?p=18729>).
- Moto, Francis. 2004. "Towards a Study of the Lexicon of Sex and HIV/AIDS." *Nordic Journal of African Studies* 13(3):343-62.
- Mtenje, Asante. 2017. "Taming Untamed Pests: Representing Female Sexualities in Tiyambe Zeleza's Smouldering Charcoal and James Ng'ombe's Sugarcane with Salt." *Literator* 38(2):1-8. doi: <https://doi.org/10.4102/lit>.
- Muheya, Green. 2015, "Prostitution Should Be Legalised – Malawi Study" *Nyasa Times*, February 14. Retrieved March 8, 2019 (<https://www.nyasatimes.com/prostitution-should-be-legalised-malawi-study>).
- Mullings, Beverley. 1999. "Globalisation, Tourism, and the International Sex Trade." in *Tourism and Sex Work in the Caribbean* edited by K. Kampadoo. New York: Rowman & Littlefield Publishers
- Neuman, W. Lawrence. 2011. *Social Research Methods: Qualitative and Quantitative Approaches*. Boston, MA: Allyn & Bacon.
- Nkhata, Mwiza Jo. 2008. "Public Interest Litigation and Locus Standi in Malawian Constitutional Law: Have the Courts Unduly Fettered Access to Justice and Legal Remedies." *Malawi Law journal* 2(2):209-25.
- NSWP. 2017, "Malawi High Court Rules Use of Rogue and Vagabond Law Unconstitutional", Scotland. Retrieved March 8, 2017 (<http://www.nswp.org/news/malawi-high-court-rules-use-rogue-and-vagabond-law-unconstitutional>).
- Ntaba, Zion Justice. 2016. "Sustainable Development Goal 16 and Access to Justice: The Case of Lay Magistrates in Malawi." Pp. 96-102 in *Goal 16 of the Sustainable Development Goals: Perspectives from Judges and Lawyers in Southern Africa on Promoting Rule of Law and Equal Access to Justice*, edited by Southern Africa Litigation Centre. Johannesburg, South Africa: Southern Africa Litigation Centre (SALC).
- Nyembe, Nomonde, Rachel Zacharias, Ayesha Krige, Marlise Richter, Lesego Tlhwale and Mateenah Hunter. 2014. "Sex Workers and Sex Work in South Africa: A Guide for Journalists and Writers." Johannesburg, South Africa: Sonke Gender Justice, Sisonke Sex Workers Movement, Sex Worker Advocacy and Education Taskforce, and Women's Legal Centre.
- O'Hare, Maureen. 2018, "Fall Travel 2018: 10 Fantastic Places and What to Do There" *CNN Travel*, September 17. Retrieved March 26, 2019 (<https://www.cnn.com/travel/article/fall-travel-places/index.html>).
- O'Manique, John. 1990. "Universal and Inalienable Rights: A Search for Foundations." *Human Rights Quarterly* 12(4):465-85. doi: 10.2307/762495.
- O'Neil, Tam, Ngeyi Kanyongolo, Joseph Wales and Moir Walita Mkandawire. 2016. "Women and Power: Representation and Influence in Malawi's Parliament." London, United Kingdom: Overseas Development Institute.
- Odunsi, Babafemi. 2010. "Romancing the Foe: The HIV Epidemic and the Case for a Pragmatic Stance on Prostitution and Illicit Drug Use in Nigeria." *Malawi Law journal* 4(2):215-32.
- Ogundipe, Leslie Omolara. 1987. "African Women, Culture and Another Development." *Présence Africaine* (141):123-39.
- Omondi, Rose Kisa. 2003. "Gender and the Political Economy of Sex Tourism in Kenya's Coastal Resorts." Paper presented at the International Symposium/Doctorial Course on Feminist Perspective on Global Economic and Political Systems and Women's struggle for Global Justice, Tromso, Norway. Retrieved Dec 27, 2018 (<http://www.arsrc.org/downloads/features/omondi.pdf>).
- Open Society Justice Initiative. 2018. *Strategic Litigation Impacts: Insights from Global Experience*. New York: Open Society Foundations.
- Owiny, Tobias Jolly. 2017, "Oyam Women Stranded with Babies Fathered by Chinese" *Daily Monitor*, November 22. Retrieved April 15, 2019 (<https://www.monitor.co.ug/News/National/Oyam->

- women-babies-Chinese-Sinohydro-Construction-Company/688334-4197532-hmdlbyz/index.html).
- Page, Samantha. 2019. "Development, Sexual Cultural Practices and HIV/AIDS in Africa." Cham, Switzerland: Palgrave Macmillan. Retrieved March 1, 2019. ([https://doi.org/10.1007/978-3-030-04119-9\\_1](https://doi.org/10.1007/978-3-030-04119-9_1)).
- Pateman, Carole. 1983. "Defending Prostitution: Charges against Ericsson." *Ethics* 93(3):561-65.
- Pattullo, Polly. 2005. *Last Resorts: The Cost of Tourism in the Caribbean*. New York: Monthly Review Press.
- Pennings, Paul, Hans Keman and Jan Kleinnijenhuis. 2005. *Doing Research in Political Science: An Introduction to Comparative Methods and Statistics*. London, United Kingdom: Sage Publications.
- Perse, Elizabeth M. 2000. *Media Effects and Society*. Mahwah, NJ: Routledge.
- Phillips, Joan L. 1999. "Tourist - Oriented Prostitution in Barbados: The Case of the Beach Boy and the White Female Tourist." Pp. 183-200 in *Sun, Sex, and Gold: Tourism and Sex Work in the Caribbean*, edited by K. Kempadoo. Lanham, MD: Rowman and Littlefield Publishers.
- Price, Louise. 2010. "The Treatment of Homosexuality in the Malawian Justice System: R V Steven Monjeza Soko and Tiwonge Chimbalanga Kachepa." *African Human Rights Law Journal* 10:524-33.
- Prowes. 2004. "It Is Really Just Like Fishing...What You Catch Depends on the Bait You Put on the Line: The Construction of Friendships between Beachboys and Tourists on the Shores of Lake Malawi." Paper presented at the Livelihoods at the Margins' Conference, London, United Kingdom (<http://www.heart-intl.net/HEART/030106/LivelihoodsattheMargins.pdf>).
- Pudifin, Sarah and Shannon Bosch. 2012. "Demographic and Social Factors Influencing Public Opinion on Prostitution: An Exploratory Study in Kwazulu-Natal Province, South Africa." *PER: Potchefstroomse Elektroniese Regsblad* 15(4):2-39.
- Quirk, Paul J. and Joseph Hinchliffe. 1998. "The Rising Hegemony of Mass Opinion." *Journal of Policy History* 10(1):19-50. doi: 10.1017/S0898030600005510.
- Ribhon, Urika. 2002. "Human Rights and the Multiparty System Have Swallowed Our Traditions: Conceiving Women and Culture in the New Malawi." Pp. 166-77 in *A Democracy of Chameloans: Politics and Culture in the New Malawi*, edited by H. Englund. Stockholm: Norddiska Afrikainsittutet.
- Richter, Marlise. 2012. "Sex World as a Test Case for African Feminism: Classic and Contemporary Readings " in *Women's Voices, Feminist Visions*, edited by S. M. Shaw and J. Lee. New York: McGraw-Hill Education.
- Rickard, Carmel. 2019, "Malawi's CJ, JSC Acted Illegally over New Appointments – High Court ", Cape Town, South Africa: African Legal Information Institute. Retrieved May 3, 2019, 2019 (<https://africanlii.org>).
- Riessman, Catherine Kohler. 2005. Pp. 1-7 in *Narrative, Memory & Everyday Life*, edited by N. Kelly, C. Horrocks, K. Milnes, B. Roberts and D. Robinson. Huddersfield, United Kingdom: University of Huddersfield.
- Robinson, Cynthia Cole. 2007. "Chapter Two: Feminist Theory and Prostitution." *Counterpoints* 302:21-36.
- Ross, Kenneth R. 2004. "'Worrisome Trends': The Voice of the Churches in Malawi's Third Term Debate." *African Affairs* 103(410):91-107.
- Sanders, Teela, Maggie O'Neill and Jane Pitcher. 2018. *Prostitution: Sex Work, Policy & Politics*. Thousand Oaks, CA: Sage Publications.
- Schneider, Hartmut 1976. "Tourism Development in Africa: Scope and Critical Issues." *Africa Spectrum* 11(1):5-16.
- Sexuality Poverty and Law Programme. 2019, "Map of Sex Work Law", Brighton, United Kingdom: Sexuality, Poverty and Law Programme. Retrieved March 11, 2019 (<http://spl.ids.ac.uk/sexworklaw>).

- Shamir, Yaacov. 2004. "What Is Public Opinion and Why Is It Important to Conflict Resolution?". *Palestine-Israel Journal of Politics, Economics & Culture* 11(3/4):44-48.
- Shapiro, Robert Y. 2011. "Public Opinion and American Democracy." *The Public Opinion Quarterly* 75(5):982-1017.
- Sharpley, Richard. 2014. "Tourism: A Vehicle for Development." in *Tourism and Development : Concepts and Issues*, edited by R. Sharpley and D. D. J. Telfer. Bristol, United Kingdom: Channel View Publications.
- Shaw, Gareth and Allan M. Williams. 2002. *Critical Issues in Tourism: A Geographical Perspective*. Oxford, United Kingdom: Blackwell Publishers.
- Shaw, Susan and Janet Lee. 2000. "What Is Women's and Gender Studies?" Pp. 1-28 in *Women's Voices, Feminist Visions: Classic and Contemporary Readings*, edited by S. Shaw and J. Lee. New York: McGraw Hill
- Sieff, Kevin. 2017, "It's Been 50 Years since Britain Left. Why Are So Many African Judges Still Wearing Wigs?" *The Washington Post*, September 17. Retrieved May 1, 2019 (<http://www.washingtonpost.com/> ).
- Simao, Paul. 2007, "Mainstream Christianity Thrives in Poor Malawi" *Reuters*, May 21. Retrieved March 1, 2019 (<https://www.reuters.com/article/us-religion-malawi-christians/mainstream-christianity-thrives-in-poor-malawi-idUSL1739802620070521>).
- Sindima, Harvey J. 2002. *Malawi's First Republic: An Economic and Political Analysis*. Lanham, MD: University Press of America.
- Sirakaya, Ercan, Victor Teye and Sevil Sönmez. 2002. "Understanding Residents' Support for Tourism Development in the Central Region of Ghana." *Journal of Travel Research* 41(1):57-67.
- Sloan, Lacey and Stephanie Wahab. 2000. "Feminist Voices on Sex Work: Implications for Social Work." *Afillia* 15(457):457-79.
- Sohrabi, Mohammad and Firoozeh Karimi. 2018. "A Feature Selection Approach to Detect Spam in the Facebook Social Network." *Arabian Journal for Science and Engineering* 43(2):949-58. doi: 10.1007/s13369-017-2855-x.
- Southern African Litigation Centre. 2016. "Judgment by Zomba High Court on the Interpretation of the Offence of Living on the Earnings of Sex Work." Vol. 2019. Johannesburg, South Africa: Southern African Litigation Centre.
- Southern African Litigation Centre. 2017. "Southern Africa Litigation Centre, a Victory for the Right to Fair and Substantial Justice: Recent Cases from the Malawi High Court." Johannesburg, South Africa: Southern African Litigation Centre.
- Southern African Litigation Centre. 2019. "Media Advisory: Malawi High Court to Determine Constitutionality of Sweeping Exercises ", Vol. 2019. Johannesburg, South Africa: Southern African Litigation Centre
- Southern African Litigation Centre. 2016. "Judgment by Zomba High Court on the Interpretation of the Offence of Living on the Earnings of Sex Work ". Johannesburg, South Africa: Southern African Litigation Centre.
- Southern African Litigation Centre. 2017. "Case Summary: Republic V PB and Others." Vol. Johannesburg, South Africa: Southern African Litigation Centre.
- Steenkamp, Marika and Nathalie Hyde-Clarke. 2014. "The Use of Facebook for Political Commentary in South Africa." *Telematics and Informatics* 31(1):91-97. doi: <https://doi.org/10.1016/j.tele.2012.10.002>.
- Sutherland, Kate. 2004. "Work, Sex, and Sex-Work: Competing Feminist Discourses on the International Sex Trade." *Osgoode Hall Law Journal* 42(1):139-67.
- Sweetman, Bridie. 2017. "The Judicial System and Sex Work in New Zealand." *Women's Studies Journal* 31(2):61-68.
- Swidler, Ann and Susan Cotts Watkins. 2007. "Ties of Dependence: AIDS and Transactional Sex in Rural Malawi." *Studies in Family Planning* 38(3):147-62.

- Swidler, Ann and Susan Cotts Watkins. 2017. *A Fraught Embrace: The Romance and Reality of AIDS Altruism in Africa*. Princeton: Princeton University Press.
- Tavory, Iddo and Michelle Poulin. 2012. "Sex Work and the Construction of Intimacies: Meanings and Work Pragmatics in Rural Malawi." *Theory and Society* 41(3):211-31.
- Tenthani, Raphael. 2000. "Prostitutes Arrested in Malawi HIV Crackdown" *BBC News*, July 26. Retrieved January 31, 2019 (<http://news.bbc.co.uk/2/hi/africa/852920.stm>).
- Tenthani, Raphael. 2012. "Attacks on Women in Trousers, Miniskirts Spark Protest in Malawi" *The Star*, January 20. Retrieved January 17, 2019 ([https://www.thestar.com/news/world/2012/01/20/attacks\\_on\\_women\\_in\\_miniskirts\\_pants\\_spark\\_protest\\_in\\_malawi.html](https://www.thestar.com/news/world/2012/01/20/attacks_on_women_in_miniskirts_pants_spark_protest_in_malawi.html)).
- Teye, Victor, Ercan Sirakaya Turk and Sevi Sönmez. 2011. "Heritage Tourism in Africa: Residents' Perceptions of African-American and White Tourists." *Tourism Analysis* 16(2):169-85.
- Theroux, Paul. 2002. "Epiphany under the Sun " *the Guardian*, October 5. Retrieved January 31, 2019 (<https://www.theguardian.com/books/2002/oct/05/featuresreviews.guardianreview4>).
- Truong, Thanh-Dam. 1990. *Sex, Money and Morality: Prostitution and Tourism in Southeast Asia*. London, United Kingdom: Zed Books.
- Twizelimana, Donatien and Adamson S. Muula. 2015. "HIV and AIDS Risk Perception among Sex Workers in Semi-Urban Blantyre, Malawi." *Tanzania Journal of Health Research* 17(3):1-7.
- Ubink, Janine and Sindiso Mnisi Weeks. 2017. "Courting Custom: Regulating Access to Justice in Rural South Africa and Malawi." *Law and Society Review* 51(4):825-58. doi: doi:10.1111/lasr.12298.
- United Nations. 2014. "Malawi Country Profile". Retrieved May 23, 2019 (<https://mw.one.un.org/country-profile/>).
- United Nations Development Programme. 2018a. *Human Development Indices and Indicators 2018 Statistical Update*. New York: United Nations Development Programme.
- United Nations Development Programme. 2018b, "Malawi - Human Development Indicators" *Human Development Reports*, New York. Retrieved May 20, 2019 (<http://hdr.undp.org/en/countries/profiles/MWI>).
- Urry, John. 1990. *The Tourist Gaze: Leisure and Travel in Contemporary Societies*. Thousand Oaks, CA: Sage Publications.
- Urry, John and Jonas Larsen. 2011. *The Tourist Gaze 3.0*. London, United Kingdom: Sage Publications.
- Van den Borne, Francine 2005. *Trying to Survive in Times of Poverty and AIDS: Women and Multiple Partner Sex in Malawi*. Amsterdam, Netherlands: Het Spinhuis Publishers.
- Vanwesenbeeck, Ine. 2017. "Sex Work Criminalization Is Barking up the Wrong Tree." *Archives of sexual behavior* 46(6):1631-40. doi: 10.1007/s10508-017-1008-3.
- Vincent, Louise. 2011. "Seducing the People: Populism and the Challenge to Democracy in South Africa." *Journal of Contemporary African Studies* 29(1):1-14. doi: 10.1080/02589001.2011.533056.
- VonDoepp, Peter. 2001. "Are Malawi's Local Clergy Civil Society Activists?: The Limiting Impact of of Creed, Context, and Class." Pp. 123-39 in *Democracy of Chameleons: Politics and Culture in the New Malawi*, edited by H. Englund. Blantyre: Christian Literature Association.
- Ward, Eilís and Gillian Wylie. 2017. "Introduction." in *Feminism, Prostitution and the State the Politics of Neo-Abolitionism*, edited by E. Ward and G. Wylie. London, United Kingdom: Routledge.
- Weitzer, Ronald. 2005. "New Directions in Research on Prostitution ". *Crime, Law and Social Change* 43:211-35.
- Weitzer, Ronald. 2006. "Moral Crusade against Prostitution." *Society* 43(3):33-38.
- Wendland, Claire. 2012. "Moral Maps and Medical Imaginaries: Clinical Tourism at Malawi's College of Medicine." *American Anthropologist* 114(1):108-22.
- WikiSexGuide. 2019, "Lilongwe". Retrieved Jan 1, 2019 (<http://www.wikisexguide.com/wiki/Lilongwe>).
- Wolff, Leon. 2012. "Law as Lore." *Journal of Civil and Legal Sciences* 2(1):1-7.
- World Bank. 2018a, "Malawi Overview": World Bank Group. Retrieved December 13, 2018, 2018 (<http://www.worldbank.org/en/country/malawi/overview>).

- World Bank. 2018b. "Malawi." in *World Bank Data Bank*: World Bank Group.
- Wroe, Daniel. 2012. "Briefing: Donors, Dependency, and Political Crisis in Malawi." *African Affairs* 111(442):135-44.
- Young, Laura A. 2016. *Public Interest Litigation. A Brief Guide for African Communities and Stakeholders.*, Edited by A. Ndiaye, C. Gomez-Perales and C. Huynh. Nairobi, Kenya: Agency for Cooperation and Research in Development.