

IHRP Intern: Alison Mintoff
Host Organization: The Equality Effect (Malawi)

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IHRP Final Report

This summer I had the opportunity to work as an intern for the Equality Effect, an international network of human rights advocates that works to address the inequality of women and girls in Commonwealth Africa. I spent three months in the cities of Zomba and Blantyre in Malawi, and worked in partnership with the University of Malawi Faculty of Law, and Women and Law in Southern Africa (WLSA).

Following the successful constitutional litigation challenging the failure of the Kenyan police to conduct prompt, effective, proper and professional investigations into complaints of defilement (sexual abuse against girls) in Kenya in May 2013,¹ the Equality Effect understood the need to begin a similar project in Malawi. Despite strong laws against defilement² in the country, including a sentence of up to life imprisonment, survivors are continuously being denied access to justice. Specifically, the outdated common law requirement for corroboration has been recognized by many victims and service providers as the most significant barrier in attaining convictions.

My work in Malawi was performed in combination with another law student from McGill University, Silvia Neagu. Our assignment was to conduct preliminary legal research in preparation for a legal strategy meeting in Malawi in August, which would determine the course of the project over the next few years. Based on our findings and preparatory research, the participants (lawyers and other human rights advocates from Canada, Ghana, Kenya and Malawi) were in a better position to understand the situation of defilement in Malawi, and to create a plan of action to improve the lives of girls with respect to sexual violence.

The internship was split into two sections: for the first half, we were based in Zomba and worked out of the Law Faculty at Chancellor College, University of Malawi. The priorities of our work there were twofold. The first task was to research the requirement of corroboration in relation to sexual offences. This practice, which was adopted by the Malawian High Court from British jurisprudence in the 1960s, has been widely eradicated as a requirement for conviction in sexual offences in the international community – for example, in the UK, Canada, and Kenya. Through canvassing case law, we were able to understand how the practice is used in the Malawian context, and how significant the requirement is to convictions in the magistrate courts of the country. Due to this requirement and a variety of other factors, many cases of defilement are not reported in Malawi. The decision on whether to report a complaint can be complicated by other deterrents including the shame and stigma that attaches to a victim of sexual assault; economic factors (including the possibility of monetary settlements if the perpetrator is willing to compensate the family of the victim and therefore evades criminal punishment);

¹ The decision can be viewed at: <http://theequalityeffect.org/160girlshighcourt2013.html>

² The offence of defilement is listed under s. 138 of the Penal Code of Malawi, and is defined as “anyone who carnally knows any girl under the age of sixteen years” regardless of whether or not there was consent.

and lack of medical evidence (medical reports are required in practice in all defilement convictions, and if there is no evidence on the medical report that defilement occurred, it severely harms the possibility of conviction).

The second priority of our research was gathering and summarizing the Malawian jurisprudence on the right to equality, which is listed under section 20 of the Malawian Constitution. The purpose was to understand whether there would be a potential case for claiming discrimination on the basis of sex, due to the adverse effects on women and girls that the common law corroboration requirement on sexual offences creates. This constitutional research also included looking at the right to dignity, access to justice, and privacy, among others.

While much of our time in Zomba was spent in the library and conducting online research (when the internet was working, which is not very often!), searching for relevant articles and sifting through case law dating back decades, we had an exceptional opportunity to enter the community and gather information from a variety of sources. With the help of some former police officers turned law students at the University of Malawi we were able to meet with the Acting Chief Resident Magistrate for the Eastern Region of Malawi, as well as the Senior Police Prosecutor in Zomba District, who alerted us to a number of opportunities to observe court proceedings on defilement cases. Through these encounters we were able to discuss the subject of defilement with a number of different actors in the criminal justice system, and observe the process in person. Those we interviewed were generally very open with us about their opinions, including critiques of the current processes. Other actors we met with included local child protection organizations, medical health professionals stationed at the One Stop Centre (comprehensive care centres for victims of sexual abuse), and academics who have conducted research on defilement victims across the country. This provided us with a thorough look into the realities of defilement cases in Malawi.

During the second half of the internship, we moved to Blantyre to work with WLSA, conducting more “on the ground” research in the communities. This was intended to include discussions with survivors about their experiences, both with the police and with the court system more generally. We hoped to find out firsthand what the major barriers were for young victims of sexual violence in achieving justice. Unfortunately, there proved to be a number of barriers to communicating with victims of defilement, including transportation, the amount of time necessary for travel to villages, translation issues, and most importantly there was no network set up to identify who would be willing and able candidates to discuss their personal experiences when attempting to report a complaint to police. In the end, while we did have a chance to be present when employees of WLSA were interacting with victims and documenting their stories, we continued our research meeting with actors who had experience with, and knowledge about, the legal treatment of defilement in the country. Our experience in Blantyre led to a number of new and important contacts including Community Child Protection Officers; managers of a government run Reformatory Centre; medical personnel who routinely dealt predominantly with defilement cases; and local children’s rights organizations who supported, educated and treated victims of sexual violence.

We compiled the findings from our various interviews, the court hearings, and other observations into a report on the legal treatment of defilement for the Equality Effect team. The report documented the

“players” in the Malawian context (who is involved in the process, and what their roles are) and detailed the theoretical police process according to protocol against what we uncovered was happening in practice. I also had the opportunity to participate in the Equality Effect’s August week-long litigation strategy conference, where the international network of lawyers, academics, and other human rights activists discussed and analyzed potential avenues for a successful constitutional challenge.

This internship was an incredibly rewarding and life-changing experience, and provided me with an important insight into the realities of human rights law. I have gained valuable skills and experience including interviewing potential witnesses, enhanced research abilities, and appreciating the patience and understanding needed when interacting with victims. Especially following the successful case in Kenya, it feels like the work we did is truly capable of making a difference in the lives of young girls. It is inspiring to see first-hand how using existing human rights law can achieve concrete change, and the meaningful empowerment of women and girls.

I am immensely grateful to the IHRP for making this summer possible, and I look forward to continuing this rewarding work with the Equality Effect.

Sincerely,
Alison Mintoff

Photos:



The University of Malawi, Faculty of Law building.



The Magistrate court in Zomba.



Myself, with the Senior Police Prosecutor, Mrs. Josephine Chigawa, in front of the Zomba Police Station.