

AI Index: PRE 01/459/2013  
11 September 2013

## **Zambia: Drop charges against men accused of same-sex conduct**

Zambia must immediately drop the charges against two men accused of same-sex sexual conduct and release them from prison unconditionally, Amnesty International said ahead of a court hearing Thursday.

“It is high time that individuals stopped being persecuted because of their real or perceived sexual orientation or gender identity. Human rights are about the dignity and equality of all people,” said Simeon Mwanza, Amnesty International’s Zambia researcher.

James Mwape and Philip Mubiana, both 22 years old, will appear in court on 12 September in the Zambian town of Kapiri Mposhi for a remand hearing. They have been in custody since 6 May 2013 facing two counts each of committing offences “against the order of nature”.

The pair were initially arrested on 25 April 2013 and detained until 2 May 2013 when they were granted bail. After their release they were arrested for the second time just four days later following another report to police by a neighbour.

“The arrest of anyone for their real or perceived sexual orientation violates the fundamental principle of non-discrimination which underlines human rights law,” said Simeon Mwanza.

Amnesty International considers the two men prisoners of conscience as they were arrested under laws criminalising consensual, private, same-sex sexual conduct. Such laws contravene international human rights law.

The organisation is also troubled by reports that on two occasions in May, government doctors forcibly conducted anal exams on both Mwape and Mubiana. The government owned Zambia News and Information Services quoted Central Province Commissioner of Police, Standwell Lungu, confirming medical exams had been conducted.

“Anal exams are inherently invasive, abusive, profoundly humiliating and conducted for reasons based purely on discrimination,” said Simeon Mwanza.

“This procedure is not only scientifically illegitimate, it is also a form of sexual assault and is tantamount to torture. Any “findings” that result from it cannot be used as evidence in a trial against the victims.”

Zambia has ratified the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This places an obligation on the government to outlaw torture and to bring perpetrators to justice.

Laws prohibiting consensual, private, same-sex sexual activity criminalise the legitimate exercise of the rights to freedom of expression, conscience, expression and privacy. These are protected in numerous

treaties ratified by Zambia including the International Covenant on Civil and Political Rights and the African Charter on Human and People's Rights.

Thirty six countries in Africa currently criminalise same-sex conduct: of which thirty-one are in sub-Saharan Africa\*