

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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Malawi: Amnesty International calls for the unconditional release of gay couple

Amnesty International has urged the Malawi authorities to immediately and unconditionally release two Malawian men, Steven Monjeza and Tiwonge Chimbalanga, who were arrested on 28 December 2009 and charged with 'unnatural practices between males and gross public indecency'.

Steven Monjeza (26) and Tiwonge Chimbalanga (20) were arrested by police in Malawi two days after they had had a 'traditional engagement ceremony' in Blantyre's Chirimba township. They were reportedly beaten by police while in custody. They appeared in court on 4 January and remanded in custody to Monday 11 January. They are currently being held at Chichiri prison.

The arrest of the two men solely for their real or perceived sexual orientation amounts to discrimination and it is in violation of their rights to freedom of conscience, expression, and privacy. Laws criminalizing homosexuality and gender identity criminalize the legitimate exercise of these human rights, which are protected in treaties ratified by Malawi, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.

Under these treaties, Malawi has a legal obligation to respect and protect the right to freedom of conscience, freedom of expression and the right to privacy, without discrimination on the grounds of, *inter alia*, sexual orientation.

Amnesty International considers individuals imprisoned solely for their consensual sexual relationship in private as prisoners of conscience and calls for their immediate and unconditional release.

Amnesty International has also criticized attempts by the Malawian authorities to subject the two men to forcible anal medical examinations to establish if they had had sex so that they could be charged with sodomy. On Monday, the authorities attempted to have the men undergo forcible anal examinations to establish whether the men had 'consummated' their engagement but this was aborted when they could not get an 'expert' to examine them.

Such forcible anal examinations, without the men's consent, contravene the absolute prohibition of torture and other cruel, inhuman and degrading treatment or punishment.

Such examinations to "prove" they had had sexual relations with other men, would not be able to confirm the allegations against the men – allegations of acts that should not be criminalised in the first place. They are in every case highly invasive, abusive, and profoundly humiliating. In addition, the doctors who conduct these examinations, by doing so forcibly, violate their ethical obligations towards people they examine. Any persons subjected to such abuse should be afforded appropriate remedy and must be protected from further abuse.

Amnesty International also warns that the arrest of Steven Monjeza and Tiwonge Chimbalanga risks driving underground men who have sex with men (MSM) in Malawi, making it more difficult

for access to information on HIV prevention and health services. Malawi's 2009 – 2013 National Aids Strategy includes measures to work with MSM to combat the spread of HIV.

Amnesty International said that the young men need support from their community and government, not confinement to prison because of their sexual orientation. They should be released unconditionally and supported to recover from this traumatizing experience.

Background

On 26 December 2009, Steven Monjeza and Tiwonge Chimbalanga held a traditional engagement ceremony in Blantyre's poor township of Chirimba. Two days later, the men were arrested by police after the story was reported in local newspapers.

On 28 December, they appeared before a Magistrate court in Blantyre and the magistrate promised to make a ruling on 4 January 2010.

On 4 January the men appeared before the same Magistrate and were denied bail "for their own safety" and "in the interest of justice." They were remanded until 11 January.

Again on 4 January, Malawian police arrested Bunker Kamba, an HIV/AIDS activist from the Centre for the Development of People (CEDEP), for possessing what police allege to be pornographic material. Bunker Kamba was arrested after police seized the material the organization uses to educate MSM on HIV/AIDS. He handed himself to the police with his lawyers and was released on bail. Police are also reported to be looking for CEDEP director Gift Trapence, on the same matter.

In the formulation of Malawi's National AIDS Strategy in 2009, the Malawi government consulted widely, including with MSM, on ways of combating the spread of HIV in Malawi. In September, the government publicly acknowledged the need to include MSM in its HIV/AIDS strategy.

Dr. Lorna Martin, Chief Specialist/Head of Division Forensic Medicine & Toxicology, University of Cape Town [in a letter to Human Rights Watch] affirms that "it is impossible to detect chronic anal penetration; the only time the [forensic anal] examination could be of any use is for acute non-consensual anal penetration, when certain injuries may be seen." In addition, in a communication with the International Gay and Lesbian Human Rights Commission, Dr. Vincent Iacopino, Senior Medical Advisor for Physicians for Human Rights and one of the principal drafters of UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) agrees that "forensic anal examinations have no value, whatsoever, in identifying consensual anal intercourse."

The participation of medical personnel in forced anal medical examinations is also a violation of medical ethics. The 1975 Tokyo Declaration of the World Medical Association prohibits physicians from being in any way involved in the practice of torture or other forms of cruel, inhuman or degrading treatment. According to the Principles of Medical Ethics Adopted by General Assembly resolution 37/194 of 18 December 1982, no health personnel may "engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment." In addition to not taking part in such acts, the sole relationship health personnel may have with detainees is to "evaluate, protect or improve their physical and mental health."

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