

URGENT ACTION

ZAMBIAN COURT POSTPONES RULING ON GAY CASE

On 30 May the Magistrate court in Kapiri Mposhi postponed delivering its verdict on the case of James Mwape and Philip Mubiana to an unknown date.

On 30 May the Magistrate court in Kapiri Mposhi was due to deliver its verdict on the case of **James Mwape** and **Philip Mubiana**, who have been held for over a year after being charged with having sex “against the order of nature”. Due to delays by the state prosecutor, the case was postponed to an unknown date.

On 6 May 2013 police in the district of Kapiri Mposhi in Zambia’s Central Province arrested Philip Mubiana and James Mwape, both then aged 21, in the village of Ndeke. The arrest was their second for alleged same-sex sexual conduct, which is considered a crime under Zambia’s penal code. The two men were first arrested on 25 April 2013, and were detained at Kapiri Mposhi police station until 2 May, when they were released on bail.

After the second arrest both men were subjected to forced anal examinations carried out by government doctors. They are being held at Mpima Remand Prison in Kabwe, the capital of Central Province, and last appeared in court on 30 May 2014 as part of their trial on charges of having sex “against the order of nature” under Section 155 of the Penal Code. On 24 January, the last state witness gave his testimony. James Mwape and Phillip Mubiana are reported to be stressed by their ordeal.

Anal examinations conducted without consent of the individuals concerned contravene the absolute prohibition of torture and other cruel, inhuman and degrading treatment or punishment under international law. Such examinations are highly invasive, abusive, profoundly humiliating and conducted for reasons based on discrimination. In addition, forensic anal examinations have no value whatsoever in identifying consensual anal intercourse.

Both men have pleaded not guilty to the charges against them. For safety reasons, actions taken on this case should not make any assumptions about, or reference to, the victims’ sexuality.

Please write immediately in English or your own language:

- Expressing concern that the trial of Philip Mubiana and James Mwape on the grounds that they have been accused of engaging in consensual same-sex sexual acts, is discriminatory and violates their rights to freedom of expression and privacy;
- Calling on the authorities to release the two men immediately and unconditionally;
- Urging them to end arrest and harassment of people based on real or perceived sexual orientation.

PLEASE SEND APPEALS BEFORE 15 JULY TO:

President
HE Mr Michael Sata
Office of the President
PO Box 30208 Lusaka, Zambia
Fax: +260 211 252545
Salutation: Your Excellency

Attorney General
Mr Mumba Malila
Ministry of Justice
PO Box 50106
Fairley Road, Ridgeway
Lusaka, Zambia
Email: mumbamalila@yahoo.com
Salutation: Dear Attorney General

And solidarity messages to:
Philip Mubiana and James Mwape
Zambia Prisons Service
Mpima Prison
P.O Box 80022 Kabwe, Zambia
Suggested message: In solidarity

Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date. This is the second update of UA 124/13. Further information:

<http://amnesty.org/en/library/info/AFR63/001/2014/en>

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ADDITIONAL INFORMATION

Please be aware that labelling Philip Mubiana or James Mwape as gay could put them at greater risk in Zambia and could affect them negatively during the trial process.

Homosexuality is considered a crime under Zambia's penal code, and if convicted, the two men face at least 14 years in prison. This case comes at a time when senior government officials have made inflammatory statements instructing the public to report anyone they suspect of being a homosexual or "promoting homosexuality."

The arrest of anyone for their real or perceived sexual orientation or gender identity amounts to discrimination and is a violation of their rights to non-discrimination, equality before the law, freedom of expression and privacy, among others. Laws criminalising consensual, adult same-sex sexual activity, or expression of gender identity criminalize legitimate exercise of these rights, which are protected in international treaties ratified by Zambia.

Amnesty International is worried about the shrinking space for human rights in Zambia under the current administration. Fundamental freedoms have increasingly come under attack with political opponents, civil society and sexual minorities being systematically suppressed.

Name: Philip Mubiana and James Mwape

Gender m/f: m

Further information on UA: 124/13 Index: AFR 63/002/2014 Issue Date: 3 June 2014