

Sender:

**Attorney General
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Ministry of Justice and Constitutional Affairs
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Date:

Dear Attorney General,

I am writing to urge the Malawian authorities to immediately and unconditionally release Steven Monjeza and Tiwonge Chimbalanga, two men who were arrested on 28 December 2009.

According to Amnesty International's information, Steven Monjeza and Tiwonge Chimbalanga were arrested two days after they held a traditional engagement ceremony (*Chinkhoswe*) in Blantyre's poor township of Chirimba. They were charged with "unnatural offences" and "indecent practices between males" under sections 153 and 156 of the Penal Code. They were denied bail and remain in custody at Chichiri Prison in Blantyre.

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, freedom of expression, and privacy. Laws criminalizing homosexuality 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 which oblige Malawi to respect and protect the right to freedom of conscience, freedom of expression and the right to privacy, without discrimination on the grounds of sexual orientation.

I am extremely concerned by reports that while in custody both men have been beaten by police. They were also subjected to forcible psychological assessment. In addition, Tiwonge Chimbalanga was forced to undergo an anal examination in hospital to establish whether or not he had had sexual relations with men. 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.

I am also concerned about the possible implications of this case on Malawi's ability to combat the spread of HIV. 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 them to access information on HIV prevention and health services. It would appear that the decision to arrest the men contravenes the government's public acknowledgement in September 2009 of the need to include MSM in Malawi's National HIV/AIDS strategy.

I urge you to take steps to ensure the immediate and unconditional release of Steven Monjeza and Tiwonge Chimbalanga and to ensure that while they do remain in custody the detainees' are treated according to internationally agreed standards for the treatment of persons in state custody including guaranteeing their freedom from torture and other ill-treatment.

I urge you to take steps to ensure respect for the right of all people to be equal before the law and to fulfil your obligation to ensure that the human rights of every individual in Malawi are fully respected, regardless of their sexual orientation or gender identity.

Yours respectfully