

**CIVIL SOCIETY ORGANISATIONS CALL FOR THE REPEAL OF DISCRIMINATORY LAWS
AND THE DISMISSAL OF CHARGES IN MALAWI SAME-SEX CASE**

January 2010

We, the undersigned organizations, write to express our deep concern at the imprisonment and prosecution of Steven Monjeza and Tiwonge Chimbalanga under provisions of Malawi's penal code criminalizing private sexual behaviour. We further call on Malawian authorities to drop all charges against both men and repeal sections 153 and 156 of the penal law.

On 28 December 2009, police officers arrested Steven Monjeza, 26, and Tiwonge Chimbalanga, 20, at their home charging them under sections 153 and 156 of the Malawian penal code for "unnatural offences" and "indecent practices between males." This happened two days after Monjeza and Chimbalanga conducted a traditional engagement ceremony, an event that was widely reported in the Malawian press. On 6 January 2010, they were taken to Queen Elizabeth Central Hospital where Chimbalanga was forced to undergo a medical examination ostensibly to ascertain whether he had sexual relations with another man. The following day both men were subjected to a psychiatric evaluation. They are being held in Chichiri Prison in Blantyre and have been denied bail by a Magistrate Court. Despite critical constitutional and legal issues raised by their lawyers in the High Court and to the Chief Justice as a Constitutional Court issue, the criminal trial continues. The penalty if they are found guilty is up to the maximum of 14 years in prison with hard labour.

The government has to prove with evidence the charges against Monjeza and Chimbalanga. Regardless of whether they are accurate, the prosecution has caused a widespread fear among persons engaged in same-sex relations — a group the Malawian government has recognized is vulnerable to discrimination and critical to its efforts to effectively respond to the HIV epidemic. The National HIV/AIDS Policy states: "Government and partners shall put in place mechanisms to ensure that HIV/AIDS/STI prevention, treatment, care and support and impact mitigation services can be accessed by all without discrimination, including [persons engaged in same sex sexual relations]." Dr. Mary Shawa, the Principal Secretary for Nutrition, HIV and AIDS in the President's Office reportedly acknowledged the need to "incorporate a human rights approach in the delivery of HIV and AIDS services to...men who have sexual intercourse with men." She further asked men who have sex with men (MSM) to come out in the open in order to assist in HIV prevention efforts. This cannot be done given recent statements by governmental officials denouncing MSM, which have served to further drive this already vulnerable community further underground.

The importance of reaching out to persons having same-sex relations as a critical component of the response to HIV has been well-recognised by leading medical institutions as well as UNAIDS, the United Nations Development Programme and the World Health Organisation. According to an August 2009 research paper published in

The Lancet, the world's leading medical journal, "The HIV/AIDS community now has considerable challenges in clarifying and addressing the needs of [men having sex with men (MSM)] in sub-Saharan Africa... political and social hostility are endemic. An effective response to HIV/AIDS requires improved strategic information about all risk groups, including MSM. The belated response to MSM with HIV infection needs rapid and sustained national and international commitment to the development of appropriate interventions and action to reduce structural and social barriers to make these accessible."

Finally, the arrest and prosecution of Monjeza and Chimbalanga not only undermine the response to HIV but are in violation of the fundamental rights enshrined in the Malawian Constitution. Specifically, the Malawian Constitution guarantees that every person has the right to liberty, human dignity, freedom and security of the person, and to be free from discrimination on all grounds. These rights guaranteed under the Constitution are reinforced under Malawi's regional and international legal obligations. The *African Charter on Human and Peoples' Rights*, ratified by Malawi in 1989, prohibits discrimination; provides for the right to equality; dignity; and liberty. Similarly, the *International Covenant on Civil and Political Rights*, which Malawi has also ratified, provides for freedom from discrimination; equality; liberty; and dignity.

Sections 153 and 156 of the Penal Code undermine the response to HIV and violate the fundamental rights guaranteed under Malawi's legal obligations. We call on the Malawi government to release and drop all charges against Monjeza and Chimbalanga and repeal sections 153 and 156.

Endorsed by:

1. National Women's Lobby and Rights Group, Malawi
2. Umunthu Foundation, Malawi
3. Centre for Human Rights and Rehabilitation, Malawi
4. Centre for the Development of People, Malawi
5. SCARJOV, Angola
6. Botswana Treatment Literacy Coalition
7. Association Nationale des Séropositifs et Sidéens (ANSS), Burundi
8. HALT-SIDA, Democratic Republic of Congo
9. Protection Enfants SIDA, Democratic Republic of Congo
10. Sambatra Izay Salama (SISAL) Madagascar
11. Collectif Arc en Ciel, Mauritius
12. Prevention Information Lutte Contre le Sida (PILS), Mauritius
13. Associação Mulher, Lei e Desenvolvimento (MULEIDE), Mozambique
14. Legal Assistance Centre, Namibia
15. The Rainbow Project, Namibia
16. Women's Solidarity Network, Namibia
17. Centre for the Study of AIDS, University of Pretoria, South Africa
18. Artists for a New South Africa
19. Community Health Media Trust, South Africa
20. Engender, South Africa

21. Intersex South Africa
22. Out in Africa SA Gay and Lesbian Film Festival
23. The Lesbian and Gay Equality Project, South Africa
24. Treatment Action Group
25. Unit for Social Behavioural Studies in HIV/AIDS and Health, University of South Africa
26. Women and HIV/AIDS Gauge, South Africa
27. Swaziland for Positive Living (SWAPOL)
28. Women and Law in Southern Africa, Swaziland
29. Children's Dignity Forum, Tanzania
30. Children Education Society (CHESO), Tanzania
31. Copperbelt Health Education Project, Zambia
32. Network of Zimbabwean Positive Women (NZPW+)
33. Gays and Lesbians of Zimbabwe (GALZ)
34. RAVANE+ (People Living with HIV Network in the Indian Ocean Region)
35. AIDS & Rights Alliance for Southern Africa (ARASA)
36. African Council of AIDS Service Organizations (AfriCASO)
37. AIDS & Rights Alliance for Southern Africa (ARASA)
38. AIDS Legal Network, Southern Africa
39. Behind the Mask, Africa
40. Southern Africa Treatment Access Movement (SATAMO)
41. Southern Africa HIV and AIDS Dissemination Service (SAfAIDS)
42. Southern Africa Litigation Centre (SALC)
43. International Treatment Preparedness Coalition (ITPC) Collaborative Fund, Africa Programme
44. ATHENA
45. International Gay and Lesbian Human Rights Commission (IGLHRC)
46. AIDS-Free World
47. Black Gay Men's Network, United States
48. Canadian HIV/AIDS Legal Network
49. Center for Reproductive Rights
50. Friends of the Treatment Action Campaign, United Kingdom
51. Heartland Alliance for Human Needs and Human Rights, United States
52. International Council of AIDS Service Organizations (ICASO)
53. Physicians for Human Rights
54. Positive Voice, Greece
55. US Positive Women's Network
56. Women Organized to Respond to Life Threatening Diseases (WORLD)
57. Andrew Feinstein, former Member of Parliament, African National Congress
58. Jape Heath, International Network of Religious Leaders Living with or Personally Affected by HIV or AIDS (INERELA)
59. Phyllis Orner, University of Cape Town, South Africa
60. Reverend Steven Lottering, South Africa