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Special Procedures Division  
c/o OHCHR-UNOG  
8-14 Avenue de la Paix  
1211 Geneva 10  
Switzerland

FAX: +41-22-917-90-06

*To the attention of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*

## Distinguished Expert:

The ICJ would like to draw your attention to credible information we have received concerning recent events in and around Mtwapa, Kenya, that pose a severe risk to the health and safety of gay men living there.

In late January and early February, rumours circulated around Mtwapa, a town outside Mombasa, that a same-sex wedding was being planned. Announcements by religious leaders condemned the supposed same-sex wedding, and multiple radio stations picked up the story. One target of the anger was the Kenya Medical Research Institute (KEMRI), which is a government health centre providing HIV/AIDS services, including to men who have sex with men (MSM). KEMRI was accused of attracting homosexuals to the community and providing health care to criminals. On 12 February 2010, a crowd of 200-300 people gathered outside KEMRI and demanded that those who were gay come outside. The gathering quickly turned into a riot. People suspected of being gay were physically assaulted and one man was doused with kerosene. The police arrested several people, including KEMRI staff members, and took them into custody, apparently for their own protection. No charges were filed. More mob attacks occurred on subsequent days, including outside the police station and at the houses of people thought to be gay. Speakers encouraged people not to rely on police but to take matters into their own hands. One religious leader, Sheikh Ali Hussein, called for a demonstration to protest against homosexuality in Mtwapa. The KEMRI centre closed down.

Since then, the government has set up a stakeholders committee to educate the public on the operations of KEMRI and to foster better community relations. Nevertheless, at least two committee members, Sheikh Hussein

Ali and Bishop Lawrence Chai, have made public statements that they joined the committee only for the purpose of eradicating gay activities in Mtwapa. “We did not join to drum up support for KEMRI, which is one of the factors behind this menace,” stated Sheikh Hussein.<sup>1</sup>

Although KEMRI has reopened, staff are very worried about future attacks. Furthermore, the threat of continued mob violence has deterred HIV+ men from coming to KEMRI to receive their medicine. Many members of the MSM community are in hiding or have fled to other towns. Without regular doses of anti-retroviral drugs, their lives are in danger.

KEMRI provides vital services and support to HIV+ individuals. It has also served as a convenient proxy for vigilante anger about homosexuality, anger that has been stoked by religious leaders’ inflammatory comments. While the ICJ appreciates the positive steps taken by local government officials and police in Mtwapa, much more could and should be done. The ICJ fears that without additional measures, a very vulnerable community may be subject to further threats, violence, and endangerment of health.

Article 12 of the International Covenant on Economic, Social and Cultural Rights guarantees the right to health. As you know, this is understood not as a right to be healthy, but to enjoy “the highest attainable standard of health conducive to living a life in dignity.”<sup>2</sup> Health facilities and health services must be available and accessible to everyone, without discrimination.<sup>3</sup> In General Comment No. 20, the Committee on Economic, Social and Cultural Rights clearly stated that the non-discrimination provision of the Covenant included discrimination based on sexual orientation and gender identity. Specifically, the Committee noted, “States parties should ensure that a person’s sexual orientation is not a barrier to realising Covenant rights.”<sup>4</sup> Furthermore, on numerous occasions, you and your predecessor have explained that international human rights law proscribes discrimination in access to health care on the grounds of sexual orientation.<sup>5</sup>

The ICJ respectfully requests that you raise the issue of the anti-gay riots in Mtwapa with the Kenyan Government and that you seek their assurances that the right to health of the gay and MSM population is protected. People should be able to access KEMRI freely and openly. The need for medicine for those who are HIV+ is especially urgent. The Government has a duty to investigate and prosecute those individuals who committed violent acts, as well as those whose speech amounts to incitement to violence. By ensuring the physical safety of KEMRI and those who receive treatment there, as well as sending a strong message that anti-gay violence is a criminal offense, the Government of Kenya would fulfil its obligation to ensure equal access to health services for all Kenyans.

Yours sincerely,



Jan Borgen  
Director, International Law & Protection

<sup>1</sup> “Clerics Threaten to Quit Team for Not Fighting Gays,” The Daily Nation, 19 February 2010.

<sup>2</sup> General Comment No. 14, Committee on Economic, Social and Cultural Rights, 11 August 2000, para 1.

<sup>3</sup> General Comment No. 14 at para. 12.

<sup>4</sup> General Comment No. 20, Committee on Economic, Social and Cultural Rights, 10 June 2009, at para. 32.

<sup>5</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2004/49, 16 February 2004, at para. 32; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2003/58, 13 February 2003, at para. 60; “Anti-Homosexuality Bill threatens fight against HIV in Uganda, warns UN expert on health,” U.N. Press Release, 22 January 2010.