



# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

*"dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights"*

Johannesburg, 20<sup>th</sup> May 2010

## **Criminalisation of Same Sex Relationships Constitutes a Violation of Malawi's International Human Rights Obligations**

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The International Commission of Jurists (ICJ) expresses its serious concern at the unlawful detention, prosecution and conviction of Steven Monjeza and Tiwonge Chimbalanga, a gay couple. The ICJ calls for the sentence against them to be unconditionally reviewed and their conviction immediately overturned.

Monjeza and Chimbalanga were arrested on 28 December 2009, two days after they held a traditional engagement ceremony. They were charged with engaging in unnatural acts and gross indecency and denied bail. This week they were convicted and sentenced to 14 years of imprisonment. The criminalization of adult consensual sexual activity violates international guarantees of privacy and non-discrimination, as reflected in international treaties to which Malawi is a party.

Without attempting to undermine or interfere with the independence of the Blantyre Magistrate's Court, the ICJ believes that the criminalisation of same-sex sexual activity, as evidenced in the conviction of Monjeza and Chimbalanga, seriously violates the right to equality and non-discrimination and the right to privacy as guaranteed respectively in Article 20 and Article 21 of the Constitution of Malawi. It also seriously breaches Malawi's international and regional human rights commitments, to which its domestic courts have an obligation to give full effect.

The ICJ is concerned about the constitutionality and conformity with Malawi human rights commitments of the crime of '*unnatural acts and gross indecency*' and the proportionality of the sentence of 14 years of imprisonment thereto related. Furthermore, prosecution of homosexuals on the grounds of obviously broad and vague criminal provisions, which seriously undermine the principle of legality of the crime; and the use of evidence illegally obtained constitutes a gross violation of the right to fair trial. This right is also guaranteed by the Malawi Bill of Rights and under the African Charter on Human and Peoples' Rights; the Universal Declaration on Human Rights; and

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the International Covenant on Civil and Political Rights, all of which are binding on Malawi.

The ICJ urges Malawi's judicial bodies to play their fundamental role in the judicial protection of human rights and fundamental rights as guaranteed in the regional and international instruments. The ICJ also calls for immediate judicial review of the Blantyre Magistrate's Court's ruling and the acquittal and liberation of Monjeza and Chimbalanga. The ICJ further urges the Republic of Malawi to bring its criminal laws and practices in line with the human rights obligations it has assumed under the African Charter; the Universal Declaration for Human Rights; and the International Covenant on Civil and Political Rights.

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