

URGENT ACTION

TWO MEN ON TRIAL FOR "UNNATURAL" SEX

Two men in Zambia have been arrested on charges of having sex “against the order of nature”, and denied bail. They are detained and awaiting trial. They have been subjected to forcible anal examination.

On 6 May, police arrested **Phil Mubiana** and **James Mwansa**, both aged 21, in the village of Ndeke, in Kapiri Mposhi in Zambia's Central Province. Local sources have told Amnesty International that one of the men's neighbours reported them to the police, and this led to the arrest, 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.

Since the men were arrested for the second time the authorities have subjected them to anal examinations carried out by government doctors without their consent, and may also have forced them to make confessions to speed up the trial. They are being held at Mpima Remand Prison in Kabwe, the capital of Central Province, and are due to appear before the court on 22 May on charges of having sex “against the order of nature” under Section 155 of the Penal Code. Both men have pleaded not guilty.

The arrest of anyone for their real or perceived sexual orientation amounts to discrimination and is a violation of the rights to freedom of conscience, expression and privacy. Laws criminalizing homosexuality and gender identity criminalize the legitimate exercise of these rights, which are protected in treaties ratified by Zambia, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.

Anal examinations conducted without consent contravene the absolute prohibition of torture and other cruel, inhuman and degrading treatment or punishment under international law. Such examinations are in every case 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.

Please write immediately in English or your own language:

- √ Expressing concern that Phil Mubiana and James Mwansa were arrested on the grounds of real or perceived sexual orientation, which 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 order investigations into allegations that government doctors conducted forced anal examinations, thus participating in the torture and other ill-treatment of the two men and if found with a case to answer, be taken on trial for perpetrating acts of torture.

PLEASE SEND APPEALS BEFORE 26 JUNE 2013 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

And copies to:
Minister of Health
Hon. Dr Joseph Kasonde
Minister of Health
Ndeke House
PO Box 30205
Lusaka, Zambia
Fax: +260 211 253344

Also send copies to diplomatic representatives accredited to your country.

Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

Same-sex sexual conduct is criminalised through Zambia's penal code and within society homophobic attitudes remain deeply entrenched. The arrest of the two young men takes place just weeks after a human rights activist was arrested in the capital, Lusaka, after he appeared on television supporting LGBTI rights. He has since been released on bail.

Name: Phil Mubiana, James Mwansa

Gender m/f: both male

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