

## **Summary**

This submission highlights three areas of concern which the Centre for the Development of People hopes to see reflected in the upcoming Universal Periodic Review of Malawi - (1) the arrest and prosecution of individuals under the country's "sodomy" laws, (2) the effect of laws criminalizing consensual sexual conduct on HIV/AIDS outreach and education, and (3) the impact of discriminatory laws on civil society.

### **Arrest and Prosecution of Individuals under "Sodomy" Laws**

Steven Monjeza (26) and Tiwonge Chimbalanga (20) were arrested on December 28, 2009, two days after they conducted a traditional engagement ceremony in Blantyre. They were charged under Section 153 of Malawi's criminal code, which criminalizes "unnatural offenses" defined as "carnal knowledge against the order of nature," and Section 156, which criminalizes "indecent practices between males." There is no evidence of criminal activity to back the arrests and subsequent trial.

On January 6, 2010, Chimbalanga was forced to undergo medical examinations to find evidence of sexual relations with males and both Chimbalanga and Monjeza were subjected to psychiatric evaluation without their consent the next day. They were denied bail and their lawyers' petitions to have the case transferred to the Constitutional Court have also been denied. Their trial began on January 11 and will continue on February 5, 2010.

This is the first instance of the use of "sodomy" laws to persecute individuals presumed or known to be homosexual in Malawi. The arrest has increased the stigma and discrimination which is already there. There are reported cases of extortion of the MSM community which they have failed to report to Police in fear of such cases turning against their sexual orientation.

The Malawian Constitution guarantees the right to liberty, dignity, and security, prohibits discrimination on all grounds, and protects the right to privacy. "Sodomy" laws violate these constitutional guarantees. The African Charter on Human and People's Rights prohibits discrimination on all grounds (article 2); articles 3 and 19 secure for all the right to equality; and articles 5 and 6 guarantee the right to dignity and liberty.

### **Effect of "Sodomy" Laws on HIV/AIDS outreach and Education**

Recent studies from Africa show that MSM are also at risk for HIV infection, and that these men may be vulnerable due to the lack of targeted prevention programs, stigma, and human rights violations. The 2008 study that evaluated HIV risk status of MSM in Malawi demonstrated that MSM are a high-risk group for HIV infection and human rights abuses(1). HIV prevalence was 21.4%, with 95.3% unaware of their HIV status. MSM were more likely to have received information about preventing HIV transmission with women than men ( $p < 0.05$ ), and were less likely to know that HIV was transmitted through anal intercourse than through vaginal intercourse ( $p < 0.05$ ). Bisexual concurrency (i.e., sexual partnerships

with both genders) was common among MSM in Malawi and may play important roles in HIV spread in the general population

The Malawian government has acknowledged the high prevalence of HIV/AIDS among men who have sex with men (MSM) and has sought to integrate them into its HIV/AIDS response. However, Monjeza and Chimalanga's arrest and widely publicized trial have struck fear in the MSM population. We, as Centre for the Development of People, a Malawian human rights organization have been receiving calls from individuals in the MSM community reporting that they are afraid of being targeted by the police. We believe that the arrest and trial of Monjeza and Chimalanga has had a detrimental effect on HIV/AIDS outreach and education in the vulnerable MSM population.

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]. 2009 to 2013 Malawi National prevention strategy has included MSM as one of the target groups to be reached with prevention programmes. 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 has 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, UNDP 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." In a January 28, 2010 statement issued by over forty African civil society organizations protesting the arrest and trial of Chimalanga and Monjeza, Gift Trapence, the Executive Director of the Centre for the Development of People in Malawi, said, "HIV and human rights cannot be separated. We need our governments to support progressive approaches to health that are not based on prejudiced notions of morality, but on evidence-based responses to the reality in our region."

The Malawi government through the ministry of Information and Civic Education issued a press release condemning homosexuality and organizations fighting the rights of MSM. This homophobia has also been propagated by the media which has demonized gay issues.

In conclusion, Malawi's inclusions of MSM indicators in UNGASS report do not reflect the realities on the ground. There is more to be done for MSM to have access to health care and HIV related information. Currently there is no national HIV program targeting MSM. Local funders fear to fund MSM related programs in fear of being seen as promoting something which is illegal.

Submitted by Centre for the Development of People (CEDEP, Malawi)

CEDEP is a registered human rights organisation dedicated to addressing the needs, improving the lives, and providing support for some of Malawi's most neglected minority groups through civic education, training, capacity building, networking and research.

We believe that improving the welfare of minority groups, including prisoners, sex workers, and those in same-sex relationships, is crucial to the health and well-being of all peoples