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Your Excellency,

On behalf of the International Gay and Lesbian Human Rights Commission (IGLHRC), a human rights organization with offices in four countries, we are writing to express deep concern with today's ruling in the case of Tiwonge ("Tionge") Chimbalanga and Steven Monjeza and the possible prison sentence of up to 14 years with hard labor that they now face. Chimbalanga and Monjeza have been found guilty of "unnatural offences" and "indecent practices between males". We await the court's reasons for judgment in the coming weeks but are disturbed by the implications of this decision and the dangerous precedent it sets in terms of human rights protections in Malawi.

This ruling comes shortly after your recent comments on homosexuality and the recent harassment of a conference on the inclusion of lesbian, gay, bisexual and transgender (LGBT) people in HIV/AIDS programming. As the President of Malawi and as the Chairperson of the African Union, we ask that you reaffirm that all Africans are entitled to enjoy the human rights laid out in the African Charter and other domestic, regional and international documents, regardless of their sexual orientation and gender identity.

The conviction of Steven Monjeza and Tiwonge Chimbalanga follows months of mounting pressure and persecution by authorities of LGBT people in Malawi. Following a traditional engagement ceremony with family and friends, the couple was arrested on December 28, 2009 for "unnatural offences" (Sections 153) and "indecent practices between males" (Article 156) of the Malawi Penal Code. On January 6, 2010, the couple was taken to Queen Elizabeth Central Hospital, where Chimbalanga was forced to undergo an involuntary medical examination - including an anal examination - to confirm the charges of sodomy. Such anal examinations have been discredited as unscientific and can represent cruel, inhuman or degrading treatment or punishment. The following day, both Monjeza and Chimbalanga were subjected to involuntary psychiatric evaluations.

In addition to the humiliation of forced medical exams, there have been several reports of the couple suffering humiliating treatment in court, including being mocked for their relationship by trial observers and forced to clean up vomit after one became ill. Since their arrest, Monjeza and Chimbalanga have been held in Chichiri Prison in Blantyre under "protective custody," despite the fact that they and their lawyers have argued that they were unsafe in prison. The two were repeatedly denied bail, a decision condemned by the Malawi Law Society. The Malawi Law Society said in an interview "We feel that the reasons for [their] being denied bail were not

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meritable...It's like saying that let's keep them here until they get convicted. Really the reasons for refusing them bail are not in line with the Constitution" (Malawi News 9 May 2010).

Several recent incidents have raised concerns about the promotion and protection of the human rights of all Malawians. We are alarmed that during the ordination of Monsignor Montfort Stima of the Archdiocese of Blantyre on April 23, 2010, you reportedly denounced homosexuality as "un-Malawian," "evil" and "disgusting", falsely linking it to corruption, violence, theft and prostitution,

Within mere days of your comments, police harassed the organizers and attendees at a conference held from April 26th-27th, 2010 in Liwonde on the inclusion of LGBT people in the fight to curb HIV/AIDS in Malawi. Two plainclothes police officers arrived on April 26th to question the conference organizers while two uniformed police officers remained outside in a car. The police arrived again the morning of the 27th to question organizers. They demanded the names of conference organizers, seized copies of the program, and inquired about specific individuals believed to be in attendance. This questioning did not serve any apparent justifiable purpose and the police failed to produce any documents authorizing their questioning of delegates or organizers. The unexplained and unwarranted presence of the police compelled some delegates to leave the conference for fear of arrest.

We are concerned that today's guilty verdict, your comments, and the growing persecution of LGBT persons in Malawi violate the rights of all Malawians to privacy, freedom from arbitrary arrest and imprisonment, and freedoms of assembly, association, opinion, and expression. These are fundamental human rights that Malawi is obligated to respect under the terms of its own Constitution and stated commitments to its citizens as well as under international law.

The Constitution of the Republic of Malawi guarantees the human rights of all Malawians yet the recent incidents described above violate a number of its provisions. The harassment and intimidation by police of participants at the recent HIV/AIDS conference in Liwonde violates Articles 32-35, which clearly establish that Malawians have the right to freedoms of association, conscience, belief, thought, opinion, and expression. Furthermore, the disruption of the conference violates the constitutional protections of the right to peaceful and unarmed assembly and demonstration in Article 38. Such violations stemming from the police harassment and intimidation of the conference are a threat to the integrity and independence of civil society and to Malawi's constitutional democracy.

Most of all, the arrest, unjustified denial of bail, and eventual conviction of Monjeza and Chimbalanga are a cause for concern. Sections 153 and 156 of the Penal Code are incompatible with the Constitutional prohibition of discrimination against persons "in any form" and its guarantee of "equal and effective protection against discrimination" in Article 20. These sections are also a violation of the right to privacy in Article 21. As the Malawi Law Society recently noted, notwithstanding the arrest being under the penal code, the repeated denial of bail effectively violates the presumption of innocence (*Malawi Law News* 9 May 2010). Furthermore, the Constitution guarantees in Article 19 that "every person shall have the right to freedom and security of person," which therefore includes time spent while incarcerated. Continued unjustified detention along with forcibly subjecting Monjeza and Chimbalanga to physical and psychological examination against their will violates the Article 19 constitutional guarantee that "no person shall be subject to torture of any kind or to cruel, inhuman or degrading treatment or punishment. " The aforementioned examinations are also a violation of Article 21 of Malawi's Constitution, which guarantees the right to privacy and includes the right not to be subject to search of one's person. Today's guilty verdict implicitly endorses these violations of Monjeza and Chimbalanga's human rights and sets a troubling precedent in Malawi.

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At a moment when you are the Chairperson of the African Union, it is noteworthy that the ill-treatment of LGBT persons in Malawi is also in violation of the spirit and the letter of the African Charter on Human and People's Rights (ACHPR), which unequivocally affirms the rights and freedoms of all people "without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status." The human rights of all people, regardless of sexual orientation and gender identity, are further affirmed in various legal instruments to which Malawi is a party, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR). This position was further supported by the Human Rights Committee in *Toonen v. Australia* in 1994.

IGLHRC is alarmed that today's verdict and your comments do not reflect a deep commitment to protecting and promoting these guarantees either in Malawi or within the African Union. We ask you to swiftly and publicly reaffirm the human rights of all Africans – including LGBT Malawians – to privacy and freedoms of assembly, association, opinion, and expression. We also ask that you demonstrate your commitment to those rights by investigating police harassment of the recent conference in Liwonge, reprimanding any wrongdoing by the police, pardoning and releasing Monjeza and Chimbanga, and repealing all discriminatory laws which target LGBT Malawians and deprive them of their fundamental rights.

Sincerely,



Cary Alan Johnson
Executive Director, IGLHRC