

HUMAN RIGHTS WATCH

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May 17, 2010

President Rupiah Banda
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Vice President George Kunda
The Office of the President of Zambia
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Honourable Kapembwa Simbao
Minister of Health
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Honourable Lameck Mangani
Minister of Home Affairs
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Dear President Banda, Vice President Kunda, and Ministers Simbao and Mangani:

Human Rights Watch is a leading independent non-governmental organization, founded in 1978, that monitors human rights developments in more than eighty countries around the world. Since 2001, Human Rights Watch has been monitoring health-related human rights violations in the context of the global HIV epidemic.

In the past three years, Human Rights Watch has issued two reports on HIV and human rights in Zambia: In 2007 we documented how domestic violence affected adherence to HIV treatment, and earlier this year we presented findings on HIV and tuberculosis in prison settings. We acknowledge Zambia's admirable commitment to providing free universal HIV treatment; however, we continue to be concerned that Zambia's goal of combating HIV and AIDS will be undermined by punitive and stigmatizing laws, policies and practices.

We are writing today to draw your attention to the risk posed to the continuing success of Zambia's HIV prevention, testing and treatment campaigns by recent statements first by religious leaders and then government authorities condemning homosexuality. The National HIV/AIDS/STI/TB Council (NAC) of Zambia acknowledged in 2009 that men who have sex with men (MSM) constitute a particularly vulnerable risk group for HIV and AIDSⁱ and recognized the "urgent need" to include them in national AIDS strategies.ⁱⁱ Zambian activists have informed us, though, that homophobic statements by prominent leaders are already creating a

climate of fear among men who have sex with men and threaten to drive this population underground, as activists fear a government crackdown on individuals suspected of being homosexual in Zambia.

As an example, in direct contradiction to the official position taken by NAC, its chairperson, Bishop J.H.K. Banda, recently condemned donor countries for speaking out on behalf of the Zambian lesbian, gay, bisexual, and transgender (LGBT) population and characterized their efforts as being of little benefit to the majority of Zambians and in contravention of the values of the country.ⁱⁱⁱ Preliminary reports from MSM community outreach workers indicate that there is increasing fear as a result of these statements, and that members of the MSM community are becoming reluctant to speak to HIV counsellors. As such statements escalate and increasing numbers of men who have sex with men become fearful for their safety, this population will feel even less able to access HIV testing and treatment.

The international public health community has recognized men who have sex with men as an essential target group in efforts to control and treat HIV. United Nations Secretary-General Ban Ki-moon noted in 2008 that “[i]n countries without laws to protect sex workers, drug users and men who have sex with men, only a fraction of the population has access to prevention. Conversely, in countries with legal protection of human rights for these people, many more have access to services. As a result, there are fewer infections, less demand for antiretroviral treatment and fewer deaths. Not only is it unethical not to protect these groups; it makes no sense from a health perspective. It hurts all of us.”^{iv} The Joint United Nations Programme on HIV/AIDS (UNAIDS) has described both the potential for rapid HIV transmission within MSM populations, and the role that stigma, denial, and fear can play in hindering HIV prevention and treatment among men who have sex with men.^v

Sections 155, 156 and 158 of Zambia’s Penal Code, which criminalize consensual same-sex conduct and relationships among adults, violate domestic, regional and international human rights standards. The Zambian Constitution guarantees every individual the right to privacy^{vi} and also prohibits discrimination.^{vii} The United Nations Human Rights Committee, which authoritatively interprets the International Covenant on Civil and Political Rights (ICCPR)—to which Zambia is a party—found in the 1994 case of *Toonen v. Australia* that laws criminalizing consensual homosexual conduct among adults violate the ICCPR’s protections of private life and against discrimination.^{viii} The ICCPR also guarantees the right to freedom of expression.^{ix} The African Charter on Human and Peoples’ Rights—which Zambia has ratified—prohibits discrimination in a similar way to the ICCPR. The Charter further requires the promotion of, respect for and reinforcement of “mutual respect and tolerance” among all individuals and specifically guarantees the right to physical and mental health,^x all of which stand threatened by the recent hostile statements against homosexuals.

The Government of Zambia and the National AIDS Council have already acknowledged the need to reconsider criminalization of same-sex sexual activity so that MSM populations can be adequately targeted as a part of the response to HIV/AIDS, stating that “[t]he legal impediment to effective HIV and AIDS interventions and programming for MSM...should be revisited so that people in this group are readily identifiable and supported with appropriate HIV and AIDS interventions.”^{xi}

Additional statements by Vice President Kunda [e.g., that “homosexuals have joined the crusade of fighting the declaration of Zambia as a Christian nation” and that “sadism, Satanism, and hatred behaviour” could ensue^{xii}], and by ruling party Movement for Multi-party Democracy (MMD) acting spokesperson Mike Mulongoti condemning human rights defenders who champion the rights of LGBT people and stating that “Zambia is declared a Christian nation and anything that is un-Christian and alien to our society is deemed to be an abomination”^{xiii} also threaten Zambia’s HIV goals and broader obligations to respect, protect and fulfil the human rights of all Zambians.

In the light of the threat that homophobic statements pose both to public health and to human rights in Zambia, we urge you to immediately revisit the criminalization and marginalization of the MSM community and to publicly condemn all statements that adversely affect health-seeking behaviour of men who have sex with men and other vulnerable populations. We call on you to make public statements acknowledging the importance of HIV testing, treatment and prevention for men who have sex with men, and to urge the Zambian Parliament to amend the Penal Code in order to decriminalize consensual sexual conduct among adults. Only by doing so will Zambia pave the way for HIV testing and treatment programs which serve all vulnerable populations.

We thank you for the opportunity to express these concerns to you, and hope that our recommendations will be of assistance in addressing these important issues.

Yours sincerely,



Joseph Amon, PhD MSPH
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CC:

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ⁱ Government of Zambia and National AIDS Council, “Joint Mid-Term Review of the National AIDS Strategic Framework 2006-2010: Technical Report,” January 2009, p. 88.

ⁱⁱ *Ibid.*, p. 68.

ⁱⁱⁱ “Zambia: Channel Funds to Projects, Not Gay Rights, Donors Urged,” *Lusaka Times*, May 7, 2010, <http://www.lusakatimes.com/?p=25974> (accessed May 11, 2010).

^{iv} Ban Ki-moon, Secretary General of the United Nations, August 2008, cited in UNDP and Joint United Nations Programme on HIV/AIDS (UNAIDS), “UNAIDS Action Framework: Universal Access for Men who have Sex with Men and Transgender People,” May 2009, http://data.unaids.org/pub/Report/2009/jc1720_action_framework_msm_en.pdf (accessed May 11, 2010).

^v UNAIDS, “Policy and Practice: Key Populations: Men who Have Sex with Men,” undated, <http://www.unaids.org/en/PolicyAndPractice/KeyPopulations/MenSexMen/> (accessed May 11, 2010).

^{vi} The Constitution of Zambia Act, *Laws of Zambia*, vol. 1, 1996, art. 11(d)

^{vii} *Ibid.*, art. 23.

^{viii} United Nations Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994).

^{ix} International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 19(2).

^x African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986, ratified on January 10, 1984, arts. 2, 3, 16, and 28.

^{xi} Government of Zambia and National AIDS Council, “Joint Mid-Term Review of the National AIDS Strategic Framework 2006-2010,” p. 34.

^{xii} “...MMD Urged to Remain Focused,” *Sunday Mail*, May 9, 2010, <http://www.statehouse.gov.zm/index.php/component/content/article/48-featured-items/602-mmd-urged-to-remain-focused> (accessed May 11, 2010).

^{xiii} “Gay Rights Have No Place in Zambia,” *Times of Zambia*, May 8, 2010, <http://www.times.co.zm/news/viewnews.cgi?category=all&id=1273309231> (accessed May 12, 2010).