



Letter to the Government of Kenya on Recent Attacks Against Health Workers and Activists

February 17, 2010

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[Kenya: Halt Anti-Gay Campaign](#)

The President; Honorable Mwai Kibaki

The Prime Minister; Honorable Raila Odinga

Minister for Justice National Cohesion & Constitutional Affairs; Minister Mutula Kilonzo

Ministry of State for Provincial Administration & Internal Security; Minister George Saitoti

Ministry of Health; Minister Beth Wambui Mugo

Attorney General; Honorable Amos Wako

Commissioner of Police; Mr. Mathew Kirai Iteere

Dear Sir/Madam, Human Rights Watch is one of the world's leading human rights organizations, documenting and advocating against a broad range of human rights violations in over 80 countries. We are writing to express our deep concern over recent attacks against HIV/AIDS workers and against individuals suspected of being homosexual in Mtwapa and Mombasa. These attacks have been supported, and perhaps actually incited, by a few religious leaders who have openly called for "flushing out" people suspected of being homosexual. Police took at least six individuals into custody in response to the violence, as this was the only way to protect them from being beaten and potentially killed. The work of the Kenya Medical Research Institute (KEMRI) is severely disrupted and some religious leaders are calling for shutting it down. As you know, KEMRI is a government health centre that provides invaluable HIV/AIDS services to the community at large, including to high-risk groups such as men who have sex with men. As we shall explain, these attacks present great threats to public health and human rights. We base this account on interviews and other research we have done with those affected and others living in the region.

Late in January, unsubstantiated rumors about a "gay wedding" scheduled to take place on February 12 started circulating in the coastal town of Mtwapa in Kilifi District. Local and national radio stations also picked up the story, apparently without confirming its veracity. According to the report of a local fact-finding team led by the Kenya Human Rights Commission, several imams and muftis discussed the news of the so-called wedding during Friday prayers on February 7, and warned their congregations to be prepared to demonstrate against homosexuals.

On Thursday, February 11, Sheikh Ali Hussein of the Council of Imams and Preachers of Kenya (CIPK) and Bishop Lawrence Chai of the National Council of Churches of Kenya (NCCCK) held a press conference. They called for an investigation of KEMRI, criticized the government for "providing counselling services to these criminals," and demanded that the KEMRI office in Mtwapa be shut down. Further, in a statement issued after the meeting, as reported in the *Daily Nation*, the religious leaders promised to "flush out gays" in Mtwapa. Chai has declared himself to be the leader of a network called "Operation Gays Out," also as reported in the *Daily Nation*; its members have apparently been at the forefront of the violence, although their numbers and actual aims are not known.

The next day, on Friday, February 12, a 200-300-strong group, many armed with sticks, stones, and other makeshift weapons, surrounded KEMRI. Mtwapa Police were present, too. A man identified by local activists as "Faridi," an organizer of the group, declared that a KEMRI staff member was homosexual because he was wearing a T-shirt promoting safer sex. Police took that man and another KEMRI staffer into custody. Earlier the same day, "Faridi", with police, forcibly entered another private individual's home, claiming that the two people in the house were homosexual. Police took the two into custody. Human Rights Watch's

sources, who have worked closely with the police, told us that the police took the men into custody to protect them from mob violence.

A large crowd gathered outside the police station where the five were being held. Sheikh Ali Hussein addressed the mob about the need to drive all homosexuals from Mtwapa, according to the report of the local fact-finding team. According to the report prepared by the fact-finding team, a former member of parliament, Omar Masumbuko, encouraged the mob to not bother bringing homosexuals to the police but rather to take the law into its own hands. Other speakers said that homosexuals only came to Mtwapa when KEMRI opened its offices there. Smaller mobs went to the homes of other people suspected of being gay.

Local sources have told Human Rights Watch that mob attacks appeared planned, not spontaneous. The crowds did not disperse after the attempted attacks on KEMRI staff but stayed and continued to take instructions from "Faridi." According to reports received by Human Rights Watch, none of the attackers have been arrested.

Accounts of the attacks filled the next day's newspaper front pages. A mob attacked and severely beat up another KEMRI volunteer on Saturday, February 13. The police took him into the police station in an attempt to save him, according to local activists who went to the police station. The same day, a person was beaten up in Mombasa on suspicion of being gay and a second person was attacked in Mombasa on Tuesday, February 16. Local activists are attempting to determine the condition and whereabouts of the victims.

On February 16, Sheikh Ali Hussein declared on the radio that there would be a large march or demonstration of Muslims to protest against homosexuality in Mtwapa on Friday, February 19. The protest may extend to mosques all along the coast, including Mombasa.

Although the initial motivation for the detention of the sex men was apparently their protection, some news accounts reported that they would be subjected to forensic examinations to determine if they are homosexual. Five of the six men refused to be examined. The sixth consented and reportedly was examined, although no "evidence" of homosexuality was found. Forensic medical examinations to "prove" homosexual conduct are archaic and discredited and, if conducted without genuine consent, may constitute torture or inhuman or degrading treatment.

These mob attacks, the hate-inciting statements by religious leaders, as well as officials' inability or unwillingness to adequately protect those under attack, have already had devastating results. Reports received by Human Rights Watch suggest that, in Mtwapa, Mombasa, and elsewhere, lesbian, gay, bisexual, and transgender people have gone into hiding in fear of their lives. Moreover, the attacks on KEMRI will have profoundly negative consequences for HIV prevention, not only among men who have sex with men but for all Kenyans. As you know, 1.5 million Kenyans have died as a result of the HIV/AIDS pandemic since 1984. HIV prevalence is more than 7%. HIV prevalence among men who have sex with men is likely to be significantly higher, as criminal penalties and social stigma interfere with effective outreach to them. These events will only make outreach more difficult, with the prospect of violence targeting those who engage in HIV work, and will drive men suspected of homosexual conduct still further underground. Meanwhile, KEMRI's offices in Mtwapa have been closed since the attacks; though there are plans to open the centre again, KEMRI staff remain nervous about further attacks.

Section 162 of the Kenyan Penal Code, which punishes "carnal knowledge... against the order of nature" with up to fourteen years imprisonment, is a relic of Kenya's colonial past, as Human Rights Watch has previously reported. British colonizers imposed such laws to control social and sexual conduct and relations as part a strategy to "reform" and govern the subject colonial populations. It is a paradox that some political and religious leaders now defend such vestigial laws as part of an "authentic" culture and tradition.

Chapter V of the Constitution of Kenya guarantees to all Kenyans the right to life, liberty, security of person, and privacy (Articles

70, 71, and 72); Articles 79, 80, and 81 protect individuals' freedom of expression, association and assembly, and movement. Further, Article 82 protects against discrimination and states that "no law shall make any provision that is discriminatory either of itself or in its effect."

The Kenyan Penal Code's provisions against "unnatural offences" contravene not only domestic law but also international human rights standards. Specifically, Article 2 of the African Charter on Human and People's Rights (ACHPR) prohibits discrimination on all grounds; Articles 3 and 19 secure for all the right to equality; Articles 5 and 6 guarantee the right to dignity and liberty; and Articles 10 and 11 guarantee freedom of association and assembly.

The United Nations Human Rights Committee, which authoritatively interprets the International Covenant on Civil and Political Rights (ICCPR) and evaluates states' compliance with its provisions, found in the 1994 case of *Toonen v. Australia* that laws criminalizing consensual homosexual conduct among adults violate the ICCPR's protections for private life and against discrimination. Further, Article 9 of the ICCPR secures for all the right to liberty, security, and rights against arbitrary detention, and Article 7 of the UN Declaration on Human Rights Defenders specifically secures the right to "develop and discuss new human rights ideas and principles and to advocate their acceptance." The report of the special representative of the secretary-general on human rights defenders to the UN General Assembly specifically identifies human rights defenders from lesbian, gay, bisexual, transgender, and intersex communities as being at particular risk and calls for greater state vigilance in protecting their rights.

We urge you to act swiftly to stem this tide of violence. We ask that you promptly and publicly condemn the homophobic statements made by religious as well as political leaders, as well as mob violence targeting people presumed to be homosexual; ensure the safety of KEMRI staff and volunteers; and ensure that these attacks are fully investigated, that those found responsible are prosecuted and punished, and that any future attacks are prevented by appropriate and measured police action.

Sincerely, Scott Long Director, Lesbian, Gay, Bisexual, and Transgender Rights Program Human Rights Watch

<http://www.hrw.org/en/news/2010/02/17/letter-kenya-ministry-state-provincial-administration-internal-security>

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