

# MALAWI

## A new future for human rights

Over the past two years, the human rights situation in Malawi has been dramatically transformed. After three decades of one-party rule, there is now an open and lively multi-party system, where the government and ruling Malawi Congress Party (MCP), are involved with the opposition parties in the transition towards democracy. The first multi-party general elections for 30 years are scheduled for 17 May 1994, and significant steps have already been made to lay the foundations for protection of basic human rights for the future, whichever party wins the elections and whatever the nature of the new government.

One important indication of the extent of this change was the government's acceptance of a visit in late 1993 by Amnesty International, which had been long banned from the country as the government's chief human rights critic. The visit, which was generally positive, is described below.

This report updates previous publications by Amnesty International on human rights in Malawi, which included, most recently, a set of proposals on measures to protect human rights which it had submitted to the government and opposition parties and published in September 1993, *Malawi: Amnesty International's recommendations for permanent protection of basic human rights following the pro-democracy vote* (AI Index: AFR 36/31/93). This new report offers further proposals on remaining human rights issues which are currently under discussion in Malawi during the pre-election period about ways of protecting human rights in the Constitution, the laws and the practices of the security forces.

### Amnesty International's Recent Visit

Two Amnesty International representatives visited Malawi from 8 to 18 November 1993, the first visit that the organization has been permitted to make to Malawi for more than 20 years concerning human rights in the country. The representatives had useful discussions about human rights with members of the government and with justice and police officials. They also met representatives of the non-governmental Public Affairs Committee, opposition parties, lawyers, religious leaders and members of new human rights groups.

Amnesty International's representatives welcomed the important human rights reforms which followed the referendum vote in June 1993 that ended the one-party state, and the Malawi government's cooperation with the United Nations Centre for Human Rights. At the time of the Amnesty International visit, several further human rights reforms

which had been agreed between the government and the opposition through the National Consultative Council (NCC) were approved by Parliament. This was a welcome development but there are further reforms which Amnesty International considers are needed to bring international human rights standards fully into play in Malawi. These are measures listed on pages 5 to 8 below, supplementing the recommendations published by Amnesty International in September 1993. Many of these are already under discussion by the government, the all-party National Consultative Council and others in Malawi in the run-up to the multi-party general elections scheduled for May 1994.

The November 1993 visit represented a significant breakthrough in terms of Amnesty International's communication with the Malawi government. It was also important in that for the first time Amnesty International was able to have direct access to Malawi to make open and free contact with people and organizations concerned about human rights.

Amnesty International's representatives - in meetings with members of the government and the ruling Malawi Congress Party (MCP), opposition parties and others, and in interviews with the official news media and the new independent press - acknowledged and welcomed the extent to which the human rights situation in Malawi had changed and improved during 1993. Amnesty International does not, however, accept in any way claims by certain government and MCP officials that it had exaggerated or been misinformed about the nature and scale of human rights violations in past years. In its yearly Amnesty International Reports and other publications, Amnesty International regularly documented the serious pattern of human rights violations in Malawi, which included extensive imprisonment of prisoners of conscience and other political prisoners, unfair political trials, frequent torture and ill-treatment of prisoners, executions and political killings<sup>1</sup>. Amnesty International supports the principles of accountability for human rights violations, "truth-telling" about abuses of the past, and "no impunity" for those responsible for serious violations such as torture and extrajudicial executions.

The focus of the visit, though, was on the current state of transition and reform. On the basis of Amnesty International's work for human rights in Malawi over the past three decades and its experience of similar human rights movements and transitions to democracy in Africa and elsewhere, Amnesty International wishes to make its own contribution to encourage the human rights momentum in Malawi in this crucial transitional period.

## **The New Human Rights Situation**

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<sup>1</sup>See for example, *Malawi: Prison conditions, cruel punishment and detention without trial* (AI Index: AFR 36/03/92, February 1992), and *Malawi: March-July 1992 mass arrests of suspected government opponents* (AI Index: AFR 36/37/92, September 1992).

All prisoners of conscience and other political prisoners have been released. Several long-term uncharged political detainees known to Amnesty International held without charge or trial since the 1960s and 1970s were among 229 detainees and convicted criminal prisoners released in an amnesty in October 1993. Amnesty International has not received any allegations of new arrests of people since the referendum on account of their opinions or beliefs. It seems that the major abuses of the past, including torture and ill-treatment of prisoners, have ended, although it was claimed that a particularly harsh punishment consisting of chaining a prisoner to the cell-floor, which had been part of the "hard-core" prison regime some years ago, had been imposed on a prisoner in Chichiri prison in Blantyre as recently as August 1993.

Another welcome development was the government's agreement in August 1992 for the International Committee of the Red Cross (ICRC) to visit all prisons (but not police stations). Their visits have evidently had a very positive impact on the treatment of prisoners, although it is also important for the ICRC to have access to prisoners held in police stations too.

Regarding the death penalty, there have been no executions of condemned prisoners during 1993, the last executions having reportedly taken place in September 1992. In September 1993, in the process of reforming the Traditional Court system in order to remove major inconsistencies with international standards for fair trial, the government suspended all current death sentences on prisoners who were either under appeal, or awaiting the outcome of petition for presidential clemency, or awaiting execution. Those affected numbered between 110 and 120, but due to a court backlog, as many as 300 capital criminal cases may have been awaiting trial by Traditional Courts. Amnesty International's representatives were told in November 1993 that Traditional Courts would lose jurisdiction over capital and other major crimes, which would be returned to the ordinary courts, and that all current death sentences would be the subject of judicial review. However, no specific commitment to a formal moratorium on executions or lifting the death sentences was given. The government seemed to favour the retention of the death penalty, although non-governmental groups such as the Public Affairs Committee have called for its abolition.

In November 1993, the Minister of Justice tabled before Parliament several bills affecting human rights which had been agreed by the all-party National Consultative Council (NCC) and drafted by the Ministry of Justice. They were approved by Parliament and enacted. They include the following:

1. The insertion of a Bill of Rights into the Constitution as an interim measure pending a full review of the Constitution (see below).

2. Repeal of sections of the Preservation of Public Security Act which provided for administrative detention without charge or trial for an indefinite period on the grounds of public security.
3. Repeal of the Decency in Dress Act, under which men and women could be imprisoned or fined on account of their clothing or hair style.
4. Repeal of the Forfeiture Act, which legalized expropriation of personal property and had been used to punish many political opponents of the government in addition to detaining them.
5. An Amendment to the Penal Code which included adding "intention to incite violence" as an essential element of the definition of "sedition".

In previous months, the government had taken other measures recommended by the opposition and human rights groups which remedied particular areas of human rights violations:

- amendments to the Constitution to allow political parties other than the Malawi Congress Party to be formed and to hold assemblies and meetings;
- a General Amnesty for political prisoners and exiles;
- lifting the ban on the Jehovah's Witnesses religious sect;
- allowing independent newspapers and magazines to publish;
- suspending the Traditional Courts and all death sentences;
- allowing independent human rights groups to be formed.

Courts have ordered that compensation be paid to at least two individuals who filed complaints of arbitrary detention and torture or ill-treatment; many other similar court cases are pending.

The important issue of human rights violations by the Malawi Young Pioneers (MYP) seems to have been largely resolved, since the MYP has apparently been disarmed. In a military operation against the MYP in December 1993 there were several casualties and discoveries of unauthorized MYP weapons caches. However, the Malawi Young Pioneers Act, which gave the MYP substantial legal immunity and wide powers of arrest, has not so far been repealed.

On 22 December 1993 Malawi acceded to the two United Nations treaties which together make internationally recognised human rights binding under national law - the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

These reforms were broadly consistent with the main proposals made by Amnesty International in September 1993 and remaining issues are detailed in the next section.

## **Human Rights - the Next Steps**

While the achievements so far have been important, Amnesty International notes that a number of its recommendations on human rights reforms are still waiting to be implemented. These are described below in order to bring them to the attention of the government, the NCC and others involved in the political process or concerned about the human rights issues in Malawi. Over the next few months Amnesty International will continue to monitor protection of human rights during the election campaign, when there is, in addition, a clear need for an independent and impartial Ombudsman-type mechanism to deal rapidly with any complaints of human rights violations or political violence.

### **1. Human rights in the Constitution**

1.1 The Bill of Rights which was inserted as a new chapter into the existing constitution, in November 1993, and which refers to many provisions in international human rights instruments, should be given fuller scrutiny and amended as soon as possible to make it fully compatible with international standards of human rights. It is derived from the equivalent chapter in Malawi's 1964 Independence Constitution, (before the Constitution was amended to entrench the one-party state and to impose restrictions on several fundamental human rights and liberties). Initially approved by the NCC, this Bill of Rights remained unchanged despite critical comments provided to the NCC by the UN Centre for Human Rights. These criticisms focused on what the UN Centre called "extensive restrictions and limitations" on many human rights provisions, and "provisions for derogations under states of emergency which far exceed those allowable under international human rights standards".

1.2 The Constitution should entrench the principle that no amendment to the Constitution, no subsidiary law and no action by the executive may abridge or abrogate or abolish fundamental constitutional rights, freedoms and guarantees.

1.3 The Constitution should specify court procedures to ensure protection or restitution of violations of constitutional rights and compensation to victims.

1.4 The Constitution should establish a mechanism to monitor human rights and to help to prevent human rights violations, such as an Ombudsman.

1.5 Amnesty International also urges that the Constitution should affirm the right to life and abolish the death penalty for all crimes. The right to life is guaranteed by article 3 of the Universal Declaration of Human Rights, article 6 of the International Covenant on Civil and Political Rights (to which Malawi is now a party) and article 4 of the African Charter on Human and Peoples' Rights (to which Malawi is already a party). Amnesty International

regards the death penalty as incompatible with full respect for the right to life, as well as the right not to be subjected to cruel, inhuman or degrading punishment. Furthermore, in Amnesty International's view, the death penalty is inherently unjust and arbitrary, however heinous the crime for which it is provided and however scrupulous the procedures by which it is enforced.

## **2. Laws restricting the right to freedom of expression**

While some sections of the Penal Code have been amended, it still allows for the possible imprisonment of peaceful critics of the government. The amendment to Section 60A adds the requirement that "no prosecution for an offence under this section shall be commenced without the sanction of the Chief Public Prosecutor", but the provision for prosecutions for false statements still remains. Following amendments to Section 64, the powers of the Minister to declare a society illegal were removed. However, Section 64 2(d) still allows for the banning of a society for "subverting or promoting the subversion of the Government or any officer thereof."

Although detention provisions in the Preservation of Public Security Act have been removed, the government still has the power under remaining sections of the act to issue control orders (house arrest) on the grounds of "preservation of public order" and arrests critics of the government who publish anything likely "to undermine the authority of, or the public confidence in, the Government".

Remaining laws in this area need scrutinising to ensure that any law permitting anyone to be imprisoned on account of expressing their peaceful opinions or beliefs in speech, writings or publications, should be repealed. This applies to the Protected Flag, Emblems and Names Act, and certain sections of the Penal Code, including the following:

- Articles 46 to 49 on the importation of banned publications;
- Articles 60 and 60a on the publication and communication of false news;
- Articles 64 to 69 on membership of unlawful societies.

### **3. Independence of the judiciary**

Further steps should be taken to ensure that all courts meet international standards of independence, impartiality and fair trial, as provided by the UN Basic Principles on the Independence of the Judiciary.

The law should be changed to formally end the jurisdiction of the Traditional Courts over capital and political offences - so far the government has suspended the Traditional Courts from hearing such cases but not ended their jurisdiction. A full judicial review of cases judged by these courts should be subject to recommendation 5 below regarding death sentences.

### **4. Prohibition and prevention of torture and other cruel, inhuman or degrading treatment or punishment**

It is essential that the laws as well as the Constitution should contain the strongest possible safeguards against these serious violations of human rights. The Constitution should include a clear statement that torture and other cruel, inhuman or degrading treatment or punishment will not be tolerated under any circumstances. The prohibition of torture should include the requirement to promptly and impartially investigate complaints of torture, to bring alleged torturers to justice, and to rehabilitate and compensate victims of torture, in accordance with the requirement of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Laws providing for corporal punishment, such as sections 25(3) and 28 of the Penal Code, which permit up to 24 strokes of a cane or rod, should be repealed and replaced with other penalties which are consistent with recognized international standards for the prevention and punishment of crime and humane treatment of offenders.

### **5. Death sentences (see also 1.5 and 3 above)**

Amnesty International urges the immediate commutation of all death sentences: these were imposed by the Traditional Courts in contravention of basic standards of fair trial.

### **6. Human rights standards and training for the police, prison service and army**

Training in the relevant international standards for the protection of human rights by police, security, prison officials and members of the armed forces would be a valuable safeguard against abuses. The relevant international standards include the following:

- The UN Code of Conduct for Law Enforcement Officials;
- the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- the UN Standard Minimum Rules for the Treatment of Prisoners;
- the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

Following the disarmament of the Malawi Young Pioneers, legislation giving them law enforcement functions and impunity in respect of violations of human rights should be repealed.

The principle should be established that all allegations of unlawful use of lethal force, arbitrary killings or extrajudicial executions by the security forces should be thoroughly, promptly and impartially investigated by an official inquiry to establish the circumstances in which the killings occurred and assess whether they were unlawful killings. Standing orders concerning the use of firearms should be amended to conform with international standards and give a clear indication to all members of the security forces on the circumstances in which it is and is not permissible to use potentially lethal force. Those responsible for ordering or carrying out unlawful killings should be brought to justice.

In addition, there should be prompt and impartial investigation into reports of attacks by or death threats issued by members of the security forces, with a view to bringing those responsible for any unlawful violence to justice.

Regarding deaths of prisoners in custody, inquests should be held promptly into all such deaths and the inquest findings should be made public.

## **7. Ratification and implementation of human rights treaties**

The Malawi Government has specific obligations through its membership of the UN to uphold international human rights standards, in particular by ratifying and observing international human rights treaties. Amnesty International welcomes Malawi's recent accession to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It requests the Malawi government to ensure these standards are incorporated into domestic law. It urges Malawi further to ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and also the two Optional Protocols to the International Covenant on Civil and Political Rights.