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# MALAWI

## Preserving the one-party state - human rights violations and the referendum

### Introduction

Although the political situation in Malawi has been transformed over the past year, human rights violations persist. Life-President Dr Hastings Kamuzu Banda has announced that a referendum is to be held on 14 June 1993 on whether Malawi is to retain the existing one-party system of government or to replace it with a multi-party system.<sup>1</sup> However, those campaigning for a pro-multi-party vote in the referendum have been subject to repeated harassment, death threats, violent attacks, arrest and criminal charges, merely because they argued for non-violent political change. Chakufwa Chihana (*see photograph*) a leader of the multi-party movement, is currently serving a nine-month prison sentence for possession of "seditious" publications advocating a multi-party system.

In the course of 1992 the authorities released most long-term political detainees and, under international pressure, amended the Preservation of Public Security Regulations which permit detention without trial. However, these reforms still do not offer adequate protection to a detained person. Although they establish for the first time a process of administrative review of a detainee's case, they do not meet the requirement under international standards that a prisoner should be brought promptly before a judge. Also, Amnesty International has just recently received information about three men who are reported to have been secretly detained for almost 30 years without Amnesty International or any other human rights organizations knowing of their imprisonment.

Another long-term political prisoner still held at Zomba Prison is Gwanda Chakuamba Phiri, a former government minister sentenced to 22 years' imprisonment for sedition at an unfair trial in a "traditional court" in 1981. Malawi's best-known long-term prisoners of conscience were Orton and Vera Chirwa, opposition leaders serving life sentences imposed by a "traditional court" in 1983 (*see photographs*). In October 1992, Orton Chirwa died at the age of 73 still imprisoned in Zomba. Vera Chirwa was finally released, after more than 11 years' imprisonment, in January 1993.

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<sup>1</sup>The referendum is scheduled for the same day as the opening of the United Nations' World Conference on Human Rights in Vienna, the first major gathering of the world body to discuss human rights for 25 years.

## **Political background**

A pastoral letter by Malawi's Roman Catholic bishops in March 1992 heralded an unprecedented outpouring of public criticism of the only party allowed, the Malawi Congress Party (MCP), which has ruled since independence in 1964. For the first time Malawians dared to engage in open political activity, but they were greeted with harsh repression. In the months after the publication of the pastoral letter, which criticized various aspects of the government's political and human rights record, hundreds of people were arrested for possession of multi-party literature, including the pastoral letter which was declared a "seditious publication".

Amnesty International documented many cases of the arrest of multi-party activists in its September 1992 report, *Malawi: March-July 1992, mass arrests of suspected government opponents* (AI Index: AFR 36/37/92), which also described the torture inflicted on some of those imprisoned and the harsh and overcrowded conditions in which they were held. This is the reply of the Malawian authorities:

"Our Life President denied the existence of torture in our prisons, and he condemned it publicly in his speech to the diplomats in January this year [1992]. In this country we carry out what our Life President says because we are an obedient people. The jailors are equally obedient to the Life President's instructions."<sup>2</sup>

Subsequent evidence has confirmed Amnesty International's allegations. For example, a woman office-worker arrested in May 1992 told a visiting delegation of British lawyers in September 1992 of her treatment at the hands of police in Blantyre:

"They said 'You are in the hands of the government. We can do anything we like with your life.' Then they ripped the clothes off me. They left me naked. They made me lie down. One pulled my legs. One man had pliers. they forced my knees and my legs apart. They started putting the pliers into my anus. I was crying at the top of my voice."<sup>3</sup>

Police had found copies of the bishops' pastoral letter and a speech by Chakufwa Chihana in her possession. After two months she was released and charged with sedition. Other accounts also tell of severe sexual abuse of women prisoners. It is reported that Flora Kapito, an employee of the Electricity Supply Commission (ESCOM) arrested in May 1992

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<sup>2</sup>From a document circulated by the Malawian Ministry of Foreign Affairs in September 1992.

<sup>3</sup>*Human Rights in Malawi: Report of a joint delegation of the Scottish Faculty of Advocates, the Law Society of England and Wales and the General Council of the Bar to Malawi*, September 17-27 1992.

for possession of multi-party literature, died in February 1993 as a result of injuries sustained while she was in prison.

Torture of government opponents was also attested by a factory worker interviewed by the visiting British lawyers. He had been imprisoned for taking part in an industrial dispute in May 1992. He described severe overcrowding at Chichiri Prison, Blantyre, as well as being beaten with bottles, sticks and hose pipes. He said that he had seen five people die in prison, most because of malnutrition:

"In the evening a prisoner known as the prefect would say 'I'll stack you'. Then we would be seated on the floor each with someone else sitting between his legs. The prefects would cram most people into the middle of the cell. The gaoler would demand money to allow you to sleep against the wall of the cell."

In another torture testimony received by Amnesty International in 1992, a man from northern Malawi was arrested for being found with a copy of the pastoral letter and held in Chitipa Prison. He described being beaten with a long black stick which was thin at one and "thick as a table leg" at the other. He said that he bled profusely from the nose and that his hearing has been seriously impaired as a result of being kicked in the head by a guard. He was held in a cell with 30 other prisoners. At night they had one lavatory pail which overflowed with urine over the sleeping prisoners. They were allowed to wash only once a week and were fed only once a day. On his release, after about a month's detention without charge, this man was dismissed from his civil service job and required to report once a week to the police.

The hundreds of people arrested in mid-1992 were later released, largely, it appears, because the government had agreed to allow the International Committee of the Red Cross (ICRC) access to the country's prisons from August 1992 and did not wish the ICRC to witness the large numbers of political detainees. Many were charged with sedition on their release.

## **The 1993 referendum campaign**

In October 1993 Life-President Banda announced that a referendum would be held on whether the country would retain the single-party system or change to multi-party rule. Although some in the pro-democracy campaign had called for a referendum, others saw it as a tactic to delay the holding of multi-party elections. Although there is clearly immense popular support for political change, government control of the mass media, its continuing harassment and imprisonment of multi-party activists, and the proposed use of two ballot boxes in each polling station all make the outcome uncertain. Even if there is a vote for

political change the timetable for elections is uncertain and the country seems destined for a long period of instability and continuing human rights violations.

At the request of the Malawi Government a technical team from the United Nations (UN) Bureau of Political Affairs has visited the country twice to advise on the conduct of the referendum, which is now scheduled to take place on 14 June 1993. The UN team stressed the need for the referendum to take place in an atmosphere conducive to free expression. It recommended that the government take a number of measures to ensure freedom of expression and association, including the repeal or suspension of restrictive laws and the release of political prisoners. The authorities have made little effort to implement the UN recommendations.

The UN technical team's reports contained a number of other implicit criticisms of the government's conduct of the referendum. The team criticized the government's initial March 1993 date for the referendum as not allowing enough time for a fair poll. The government conceded the point, postponing the date until June. The UN team has strongly criticized plans to use two separate ballot boxes in each polling station as being particularly likely to lead to intimidation and fraud and it recommended that people representing all viewpoints should have access to those media which are government-controlled. These recommendations have not been implemented and the government's referendum regulations published in February, which state that all participants in the campaign shall have unfettered freedom of speech, appear to have had little practical effect.

These and other criticisms of the conduct of the referendum have also been forcefully stated by the pressure groups lobbying for a multi-party vote in the referendum. These include the Public Affairs Committee (PAC), a grouping of religious and professional bodies, the Alliance for Democracy (AFORD) and the United Democratic Front (UDF).

## **Imprisonment of multi-party activists**

Life-President Banda's announcement of the referendum was made on 18 October 1992. Only days later the trial of AFORD chairman Chakufwa Chihana began in the High Court in Blantyre on charges of sedition for possession of publications advocating a multi-party system. In the months since then, multi-party campaigners have been subject to frequent arrests and criminal charges. This is evidently a change from the pattern before mid-1992 of indefinite administrative detention, but represents continuity in the authorities' determination to punish peaceful criticism or opposition with imprisonment.

In the days immediately after the referendum announcement, a leading member of AFORD and the Presbyterian Church in Mzuzu, the Reverend Aaron Longwe (*see photograph*), was arrested, along with a schoolboy and a school receptionist at Phwezi

School. The boy was alleged to have drawn art posters in praise of Orton Chirwa, a prisoner of conscience who died in prison on 20 October 1992. Reverend Longwe was charged with incitement to political violence; the others were apparently later released without charge.

On 29 October 1992, one of Chakufwa Chihana's lawyers, Harry Chiume, was arrested and charged under Section 60 of the Penal Code with making a broadcast "harmful to the interests or to the good name of Malawi" - namely, a radio interview with the British Broadcasting Corporation (BBC) about the case of Chakufwa Chihana. He was released pending trial. Harry Chiume was one of about 260 people arrested in Blantyre on 20 December 1992 in the course of a peaceful protest against the conviction and imprisonment of Chakufwa Chihana. They were held for five days before being released. The legal limit under the Criminal Procedure Code for detention without being brought to court is 48 hours. Some 130 were then charged with unlawful assembly.

A crucial issue in the referendum campaign is the government's monopoly over the principal mass media - the Malawi Broadcasting Corporation and the *Daily Times*, the country's only daily newspaper since 1964. There have been several attempts to challenge this monopoly in recent months with the launching of independent newspapers. The editor of one of these, Felix Mponda Phiri of the *New Express*, was arrested on 2 January 1993 at the airport in Lilongwe as he returned from Zambia with copies of the first issue of his paper. The issue was printed outside the country because of official control over the main printing press in Malawi. Felix Mponda Phiri was held for 17 days before being released without charge. Apparently the police were under the mistaken impression that the *New Express* had not been registered with the appropriate authorities. The first issue of the paper carried front-page stories criticizing the High Court's conviction of Chakufwa Chihana and reporting that Machipisa Munthali, recently released after 27 years as a political prisoner, was planning to sue the government.

In the first months of 1993 a number of prominent figures in the multi-party campaign have been arrested and face criminal charges. Bakili Muluzi, chairman of the UDF, was arrested on 15 February 1993 and held for three days at Chichiri Prison, Blantyre. He was released on bail after being charged with misappropriating the funds of the Malawi Congress Party - an offence alleged to have been committed some 15 years ago in the 1970s when he was secretary general of the party. Earlier, on 5 January 1993, the vice-chairman of the UDF, Chakakala Chaziya, had been arrested and held for more than two weeks along with three other UDF members.

Alice Longwe, the wife of Reverend Aaron Longwe, was arrested at her home in Mzuzu on 22 January 1993. Police searched the house and took away documents. She was charged with sedition, one of a series of similar charges against the Longwe family.

The Reverend Peter Kaleso was arrested in Lilongwe on 24 January 1993 after addressing an AFORD rally. In his speech he had contrasted alleged government spending on presidential residences with the shortage of money allocated to Malawi's health service. He was released on bail on 2 February after being charged with "uttering words abusive to the President".

Other less prominent members of the multi-party pressure groups have also been arrested. AFORD members are reported to have been arrested in Jenda on 26 February and 6 March 1993 for wearing T-shirts bearing political slogans. O.R.N. Mkweu, an AFORD official from Mzuzu, was arrested by police on 4 February 1993 and held at Champira police station and later Mzimba Prison. He was charged with possession of "seditious publications" - leaflets advocating a multi-party system. He was reportedly held in grossly overcrowded conditions and beaten by prison warders at Mzimba Prison.

On two occasions groups of exiles returning to take part in the referendum have been detained on arrival in Malawi. On 7 February 1993, Shyley Kondowe, Robert Khembo and John Banda, all members of the exiled opposition Malawi Democratic Party (MDP), returned from exile in South Africa to campaign for a multi-party vote in the referendum. They were arrested at the airport and held in police custody in Lilongwe. On 4 March, in response to an application by their lawyers, they were charged with importing "seditious publications" and granted bail. However, they were unable to find anyone to stand surety and remained in Maula Prison in Lilongwe. Shyley Kondowe and John Banda were released on bail at the end of March and Robert Khembo was finally released in mid-April. However, he was almost immediately rearrested, apparently because of radio interviews which he had given after his release.

Edmond Jika and Gabriel Nkunika, who are members of another exiled opposition group, the United Front for Multi-Party Democracy (UFMD) based in Zambia, were arrested at the airport in Lilongwe on 24 February 1993 on their return to take part in the referendum campaign. Gabriel Nkunika, who had used a Zambian travel document, was deported on 17 March but Edmond Jika remained in custody in Lilongwe without charge until mid-April. There were reports that he had been rearrested with Robert Khembo of the MDP.

## **The legal framework of repression**

The referendum campaign is being conducted within the framework of laws which severely inhibit freedom of expression, prescribing severe prison sentences just for non-violent criticism of the government.



Thus, Section 60 of the Penal Code lays down a maximum penalty of life imprisonment for anyone making a publication or broadcast "harmful to the interests or to the good name of Malawi." It was under this law that Harry Chiume was charged for his BBC broadcast on the Chakufwa Chihana case in October 1992. Earlier, in May 1992, Krishna Achutan was arrested and charged under the same section of the Penal Code for a BBC interview in which he drew attention to the plight of his father-in-law Aleke Banda, a prisoner of conscience who had been detained without charge since 1980.

The Protected Flags, Emblems and Names Act created an offence of "insults, ridicule or disrespect" towards the Life-President and various national emblems. It was under this law that Reverend Peter Kaleso was charged in January 1993 for criticizing government policy on health care.

However, it is Section 50 of the Penal Code - the offence of sedition - which has been most widely employed against critics of the government in recent months. A "seditious intention" is defined as an intention "to bring into hatred or contempt or to excite disaffection against the person of the President, or the Government" or "to raise discontent or disaffection amongst the subjects of the President". Although Section 50 goes on to say that this does not preclude pointing out that the President has been "misled or mistaken", in practice the courts have interpreted the law to rule out any non-violent criticism of the President or political system.

A crucial case has been that of Chakufwa Chihana, a prominent member of the multi-party movement who was convicted of sedition and sentenced to two years' imprisonment with hard labour in December 1992. His conviction was upheld on appeal to the Supreme Court in March 1993, although his sentence was reduced to nine months' imprisonment with hard labour.

Chakufwa Chihana, aged 53 - previously a prisoner of conscience detained without charge from 1971 to 1977 - is the Secretary General of the Southern Africa Trade Union Coordination Council, as well as chairman of AFORD. He was arrested on 6 April 1992 in Lilongwe, as he returned from an opposition meeting in Zambia. He was held incommunicado in defiance of several High Court rulings until July 1992, when he was taken to court and charged with possessing "seditious" publications, including a written speech advocating a multi-party system which he tried to deliver at the airport on his arrival, documents from the meeting in Zambia and the pastoral letter by the Roman Catholic bishops. The court released him on bail but police promptly rearrested him and added further charges of sedition because of a press interview which he had given after his release. After a further two months in prison he was granted bail to await trial.

In September 1992, Chakufwa Chihana told the visiting delegation of British lawyers about his treatment in his early weeks in Mikuyu prison in Zomba:

"The cell was a very small cell. It was only about the size of my body. There was a window in the cell which had been deliberately blocked off. There was no ventilation. Their intention was that I should suffocate. I was held for almost a month in leg irons that had been imported from Sheffield (England). My legs swelled. I was incommunicado from family and friends."

His case came to trial by the High Court in Blantyre in November 1992. The prosecution did not try to argue that he had advocated violent opposition to the government, but instead maintained that the Malawian definition of sedition included documents advocating non-violent change to multi-party rule. On 14 December 1992, the judge found Chakufwa Chihana guilty of sedition and sentenced him to two years' imprisonment with hard labour. He was refused bail pending his appeal.

The appeal to the Supreme Court in Blantyre was heard on 8 March 1993. On 29 March Chief Justice Richard Banda dismissed the appeal but reduced the sentence to nine months' imprisonment with hard labour. The failure of Chakufwa Chihana's appeal sets a disturbing precedent for the cases of other multi-party activists currently facing sedition charges. Like him their only offence is possession of documents advocating non-violent political change. His imprisonment thus has profound implications for the fairness of the referendum. Many others currently facing similar prison sentences for advocating a multi-party system are bound to be inhibited in their participation in the campaign.

Chakufwa Chihana is suffering from chest and throat infections, severe headaches and serious weight loss as a result of harsh prison conditions, including the denial of proper medical treatment, poor diet and carrying out the court-imposed "hard labour" -cutting grass and carrying jerrycans of water for long hours, even when he is ill. Amnesty International believes that this constitutes "cruel, inhuman or degrading punishment" which is internationally forbidden. It is not known whether Chakufwa Chihana will serve the remainder of his sentence in Mikuyu Prison in Zomba, where he had been held before the trial, or in Nsanje Prison in a low-lying and malarious part of southern Malawi. Criminal prisoners at Nsanje have frequently died from beatings or malnutrition.

The UN technical team recommended to the Malawi Government that it repeal all laws restricting freedom of expression and association, or at least suspend them for the duration of the campaign. Referendum regulations promulgated in February 1993 recognize four "Special Interest groups" - the ruling MCP, still the only permitted political party, and the multi-party pressure groups, AFORD, the UDF and the PAC. The regulations state:

"...every Special Interest group and every representative, member or supporter thereof shall enjoy complete and unhindered freedom of expression and information in the exercise of the right to campaign." (Regulation 35)

They also grant immunity from prosecution for statements held or opinions held during the campaign. However, this is limited by Regulation 37 which prohibits:

"language which is inflammatory, defamatory or insulting or which constitutes incitement to public disorder, insurrection, hate, violence or war."

In view of past legal restrictions on freedom of speech in Malawi, of which the case of Chakufwa Chihana is a clear example, it is likely that this limitation will continue to be used against the multi-party campaign. Arrests have continued since the regulations were published.

## **Death threats and violence against multi-party activists**

The dangers confronting multi-party campaigners are not only those posed by Malawian law. For many years opposition activists have also been under threat of violence outside the framework of the law from state and paramilitary forces, including extrajudicial executions. For example, in 1989 an exiled Malawian journalist in Lusaka, Zambia, Mkwapatira Mhango, died in a firebomb attack on his home only weeks after being attacked by name in a speech by Life-President Banda. Earlier, in 1983, three government ministers and a member of parliament died, allegedly in a car crash. They had last been seen alive in police custody, after being apprehended because they had advocated a more collective style of leadership within the ruling party. The same year an opposition leader, Attati Mpakati, was assassinated in Harare, having earlier been maimed in a parcel bomb attack in Maputo. Over the years Amnesty International has documented a number of instances of deaths of political prisoners in detention and has called, without success, for the establishment of independent inquiries into the circumstances.

The government has also failed to respond to calls for an independent investigation into the deaths of more than 40 people when police opened fire on anti-government demonstrations in Blantyre in May 1992. On 4 November 1992 youths, apparently members of the paramilitary Malawi Young Pioneers, a uniformed political militia with powers of arrest, stoned a car carrying Chakufwa Chihana and his lawyer from the High Court during his trial. There were a number of incidents during the trial in which supporters of Chakufwa Chihana were assaulted outside the court. The most serious took place outside the appeal court on 8 March 1993, when police opened fire with automatic weapons on a crowd of some 6,000 people, wounding at least five, two seriously.

A prominent church minister appears to have been the victim of assassination attempts. The Reverend Emmanuel Chinkwita Phiri, Acting General Secretary of the Christian Council of Malawi and head of the Baptist church in Malawi, is a member of the PAC, which represents churches, professional bodies and other groups lobbying for political reform in Malawi. He believes that on three recent occasions there have been attempts to kill him.

The most recent incident occurred on 4 January 1993, when Reverend Chinkwita Phiri was at a bus stop on the outskirts of Lilongwe late at night. A car drove at high speed directly at him and he was only saved by a friend who pulled him out of its path. Eye-witnesses believed the car had deliberately aimed to hit him. On two separate earlier occasions, in November and December 1992, it appeared that he had been the victim of an attempt to poison him by impregnating his clothes with organo-phosphate poisons, which function by interfering with the transmission of nerve impulses, leading to impairment of basic body functions and, in some cases, to irreversible damage and death.

In November 1992 the PAC met the UN technical team which was preparing an advisory report on the referendum. Reverend Chinkwita Phiri was wearing a suit which he had just collected from the dry cleaners. As the meeting proceeded he became aware of a burning sensation around his neck and shoulders. He left the meeting and went home to bed, where he developed a fever, rapid heartbeat and a burning sensation. He was taken to hospital, given medication and gradually recovered.

In December 1992 when he was part of a Christian Council of Malawi delegation visiting Kenya he suffered a similar sensation and again had to receive medical treatment. As on the first occasion he believed that his clothes had been poisoned.

Recently published evidence has shown that in the 1970s the Rhodesian security forces made extensive use of organo-phosphate poisons against the Zimbabwean nationalist opposition, particularly by impregnating them into clothing. In 1989, Reverend Frank Chikane, general secretary of the South African Council of Churches and a prominent critic of *apartheid*, was apparently victim of a similar attack to that on Reverend Chinkwita Phiri when his clothes were treated with organo-phosphates and he became extremely ill during a visit to the USA. It seemed that his luggage had been interfered with on leaving South Africa. There is a long history of security co-operation between the Malawian and South African governments.

Amnesty International cannot provide independent confirmation of these incidents. However, they should be seen in the light of previous well-documented covert extrajudicial executions referred to above. In particular, an extraordinary tape made by the Malawi Broadcasting Corporation has come to light and has been authenticated. It is a verbatim record of a meeting of senior officials of the MCP held in March 1992 shortly after the

Roman Catholic bishops had issued their pastoral letter. Amnesty International had received details of this meeting at the time and on the strength of these reports issued urgent appeals for the safety of the bishops. The tape, in Chichewa, the main language of Central Malawi, underlines Amnesty International's fears at the time. Official after official urged in the most lurid terms that the bishops should be killed. Thus, for example, a senior figure in the government, Wadson Deleza, Minister without Portfolio, stated:

"If [Bishop] Chimole and [Archbishop] Chiona come to the gate we shall kill them. The Youth League will not allow a stooge or a traitor here. We shall kill them while you are watching. If someone asks about the disappearances, we will say we don't know where these people have disappeared to. We don't go to the president to tell him. We say they disappeared."

Amnesty International is also concerned for the physical safety of many other multi-party campaigners in the period leading up to the referendum. AFORD alleged in January 1993 that the Malawian Government had sent security agents to monitor opposition representatives, particularly in neighbouring countries. They fear that this may be in preparation for assassination attempts. Other pro-democracy activists, including church leaders and PAC members, have also expressed similar fears for their safety. Some have received threats of violence against them, some have been arrested or harassed by police, others have been beaten by the Malawi Young Pioneers. There have been mysterious attacks on the homes or property of some of these activists. Thus in April 1993 Malawi Young Pioneers followed and hijacked a vehicle belonging to the Reverend Peter Kaleso. Shortly afterwards people broke into the house of the Reverend Aaron Longwe and stole property. Those in prison, including Chakufwa Chihana, have also at times expressed fears of attempts to poison them or to deliberately make them ill by denying medical treatment.

## **Long-term political prisoners**

For 28 years, until 1992, presidential powers of detention without trial were the principal means used by the Malawian authorities to suppress political dissent. Under the Preservation of Public Security Regulations, 1965, the President may order the indefinite detention of any person "for the preservation of public order". The regulations also allow an "authorized officer", which would include both a police officer and a member of the paramilitary Malawi Young Pioneers, to detain a person if there appears to be grounds for that person's detention by presidential order. Since 1977 there has been no time limit on such orders. Under the 1965 regulations the President was required to review detention orders every six months, although it appears that in practice this did not happen. There was no provision for any impartial review of the grounds for a detention order, for example by a judge. Detainees were sometimes held for 10 years or more, even for trivial offences.

During 1991 and 1992 the authorities released well over 100 long-term detainees held under the Preservation of Public Security Regulations, including many prisoners of conscience. This was apparently in response to international pressure, including pressure from the country's principal aid donors, who in May 1992 suspended non-humanitarian aid to the country. In July 1992, Life-President Banda announced reforms to the Preservation of Public Security Regulations, although by this time few political prisoners were detained and many more were being held on charges of sedition.

The 1992 Preservation of Public Security (Amendment) Act creates a review tribunal to consider detainees' cases. However, although this tribunal is chaired by a High Court judge - Justice L. E. Unyolo, who convicted Chakufwa Chihana of sedition - it is an administrative, not a judicial body, which meets *in camera* and only has the power to make recommendations to the President about the fate of detainees. It thus does not meet the requirement of the United Nations' *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment* that all cases should be promptly and impartially reviewed by a judicial or similar body.

Although the last political detainees held at Mikuyu Prison appeared to have been released in the course of 1992, details have since emerged of a number of long-term political prisoners remaining at Zomba Central Prison. These include three men believed to have been held since the mid-1960s. Nelson Mtambo, Sidney Songo and Ntwana Mlombwa were reportedly arrested in the aftermath of an armed rebellion in 1965 led by former Cabinet Minister Henry Chipembere. Henry Chipembere, from Mangochi District in the Southern Region, had resigned from the government in September 1964 in sympathy with a number of his Cabinet colleagues, including Orton Chirwa, who had been summarily dismissed by Prime Minister Dr Banda (as he then was). Henry Chipembere went into exile and organized armed opposition to the government, centred upon his home district. The rebellion was brutally suppressed, with hundreds of his suspected supporters, including the populations of entire villages from his home area, arrested, tortured and taken into detention for long periods. Henry Chipembere later died in exile.

It is not known if Nelson Mtambo, Sidney Songo and Ntwana Mlombwa were actively involved in the Chipembere rebellion. Nelson Mtambo was a cook employed by Henry Chipembere and the other two come from the former Minister's home village. It is not known if they were ever charged with any offence. They are probably held under presidential detention orders, although the government has never admitted their imprisonment in public or indicated if it has any legal basis.

The cases of Nelson Mtambo, Sidney Songo and Ntwana Mlombwa are similar to those of Machipisa Munthali, imprisoned in 1965 after the Chipembere rebellion and only released in July 1992. Since his release he has described his treatment in prison. After his arrest his feet were burnt and he was made to walk on broken glass. He was charged with

possession of arms but denied a lawyer. He pleaded guilty - after his release he stated that this was because he was threatened with death if he did not do so. After serving an 11-year sentence Machipisa Munthali was not released but remained in detention under presidential order, most of the time in solitary confinement in Mikuyu Prison in a cell measuring 1 metre by 2 metres (this appears to have been the same cell later occupied by Chakufwa Chihana). Details of his conditions of imprisonment in Mikuyu are confirmed by other recently released detainees.

Another prisoner who is still detained without charge is Fred Kazombo Mwale, a nephew of Life-President Banda. He was arrested in May 1991 as a result of a dispute with a senior adviser of the President's. He was reported to have been taken to Nsanje Prison where it was widely rumoured that he had been secretly killed in late 1991. However, on 5 January 1993 an interview with Fred Kazombo Mwale was broadcast on the Malawi Broadcasting Corporation, in an apparent attempt to dispel accounts of his death. Fred Kazombo Mwale's family applied to the High Court for an order that he should be produced in court. His son, Joseph Kazombo, alleges that government officials made threats against his life and those of his family if he refused to withdraw his application to the High Court on his father's behalf. He continued with the case, which the High Court heard on 5 February 1993. The police did not produce Fred Kazombo Mwale but the court found that his detention was unlawful and ordered his release. However, so far the police have failed to release Fred Kazombo Mwale, who is now believed to be held incommunicado in Zomba Central Prison in violation of the court's order.

Another long-term political prisoner who remains at Zomba Central Prison is Gwanda Chakuamba Phiri, a former Government Minister. He is not a detainee but is serving a 22-year sentence imposed by a "traditional court" in 1981 for sedition. Gwanda Chakuamba was arrested in late 1979 or early 1980. It was widely alleged at the time that the reason for his arrest was that at a public meeting he, rather than President Banda, had been praised for bringing development to the Central Region in his capacity as Minister responsible for the region. After his arrest his house was searched and a pistol allegedly found. He was charged with possessing documents connected with the opposition in exile and "uttering seditious words". His trial in a "traditional court" in Blantyre lasted from November 1980 to March 1981. A former member of parliament, Sofiliano Faindi Phiri, who was charged with him, was sentenced to five years' imprisonment and Gwanda Chakuamba to 22 years.

Gwanda Chakuamba is reported to have been kept for long periods in leg-irons and handcuffs in the early 1980s after the authorities claimed to have uncovered a plot to help him escape from prison. In 1991 the authorities claimed to have intercepted letters from Gwanda Chakuamba which were smuggled out of prison by warders. Three children of Gwanda Chakuamba's were arrested along with two warders, named Kumwenda and Chigwenembe. The children were released after a few weeks but it is believed that Kumwenda and Chigwenembe may still be held.

## **The case of Orton and Vera Chirwa**

At the time of her release in January 1993 Vera Chirwa, Malawi's first woman barrister, was the longest-serving African prisoner of conscience known to Amnesty International, having been imprisoned for more than 11 years. However, the joy of her release was deeply tinged with sorrow that her husband, Orton Chirwa, was not with her. He had died in custody three months earlier.

Orton Chirwa was a leader of the struggle for Malawi's independence from Britain and Attorney General in the first post-independence government. However, he and several other Ministers quickly fell into dispute with Prime Minister Dr Banda, and fled into exile. Living in Tanzania, Orton and Vera Chirwa founded the Malawi Freedom Movement.

In December 1981 Orton and Vera Chirwa, with their son Fumbani, were arrested by the Malawian police. They maintained throughout their subsequent trial that they had been abducted from neighbouring Zambia. Certainly the official accusation, that the three of them had entered Malawi to incite an armed rebellion against the government, strained credulity. Fumbani Chirwa was later released uncharged, but his parents were put on trial for treason before a "traditional court" which respected none of the international norms for a fair trial (see below). Orton and Vera Chirwa were convicted and condemned to death - a verdict and sentence confirmed on appeal in 1984. It was only after widespread international appeals on the Chirwas' behalf that Life-President Banda commuted their sentences to life imprisonment later in 1984.

It later emerged that the appeal hearing in 1983 was the last time that Orton and Vera Chirwa were to see each other until September 1992, although they were both held in Zomba Central Prison. Their conditions of imprisonment were harsh, with Orton Chirwa being periodically kept in leg-irons. At times he was reported to suffer from malnutrition and it appears that neither of them received adequate medical attention.

In September 1992 a visiting delegation of British lawyers met the Chirwas - this was also their first chance to meet each other for almost nine years. Orton Chirwa was nearly deaf and almost blind from untreated cataracts. A month later he was dead. An official post-mortem examination was carried out - this almost never happens when prisoners die - and the body was released to the Chirwa family for an independent autopsy as well. However, despite the clear requirement of Malawian law to hold an inquest in the event of the death of a prisoner, none has been carried out. Thousands of supporters attended Orton Chirwa's funeral in his home area of Nkhata Bay, but Vera Chirwa was not allowed out of prison to attend her husband's burial.



## **"Traditional courts" and the death penalty**

Until mid-1992 all criminal cases with any political element were heard in the "traditional courts", a parallel judicial system which respects none of the essential guarantees of a fair trial. Although a number of sedition cases and other political cases have been heard in the magistrates courts or the High Court since mid-1992, cases carrying the death penalty continue to be heard in the "traditional courts".

The "traditional court" system is not in fact traditional but was established by the British colonial authorities to deal with minor cases and disputes. Their jurisdiction was extended to include murder and rape in 1970 when Life-President Banda objected to the criminal courts acquitting a group of people accused of a series of celebrated and grisly murders. He told Parliament at the time: "We have to remember that lack of evidence is not proof of innocence." After the Traditional Courts Act had been amended they were retried.

The jurisdiction of the "traditional courts" was further extended in 1976 to include treason, after the arrest of the secretary general of the MCP, Albert Muwalo Nqumayo, and the head of the police Special Branch, Focus Martin Gwede, on treason charges. They were tried, convicted and sentenced to death. Albert Muwalo was executed although Focus Gwede received a last-minute reprieve.

The choice as to whether a case is heard in the High Court system or the "traditional courts" lies with the prosecution. The bench in a "traditional court" consists of four chiefs (local administrative officers), appointed by the President under the Chiefs Act and removable by him, as well as a qualified lawyer, who writes the judgment. The accused has no right to legal representation and, unlike in the High Court, receives no advance summary of the prosecution evidence in order to prepare a defence.

Procedural matters and rules of evidence are entirely at the discretion of the court. Thus, although the Traditional Courts (Procedure) Rules allow that the accused may call witnesses in his or her defence, in the most celebrated of "traditional court" cases, the treason trial of Orton and Vera Chirwa in 1983, that right was denied. In the trial of Albert Muwalo and Focus Gwede, the court admitted as evidence three anonymous letters accusing the two men of plotting to assassinate the President, remarking in the judgment: "There is no smoke without fire". In the case of Orton and Vera Chirwa, the accused were tried for alleged offences which had not even taken place within the jurisdiction of the Southern Regional Traditional Court which tried them. Important evidence against them was contained in written plans for the overthrow of the government which the Chirwas were alleged to have carried with them when they infiltrated the country. The handwriting in the documents was

attributed to the Chirwas by an expert who also happened to be the police officer leading the investigation.

Discretion as to whether those convicted may appeal against a "traditional court" judgment lies with the Minister of Justice. The right of appeal is only within the "traditional court" system. A person convicted in a "traditional court" thus may not appeal to the Supreme Court.

In the Chirwas' appeal judgment in 1984, the Traditional Court of Appeal commented:

"As regards the complaint about the conduct of the trial it seems that the lower court should have exercised firmer control than it did and also the prosecutor should have restrained his witnesses. The record is littered with unnecessary abuse which is not part of the tradition or law. Some of the trial court's rulings are wrong in law... The court raised numerous doubts and made some extraordinary findings..."

This comment, of course, would have been written by the trained lawyer on the appeal court bench, but the majority of judges upheld the judgment of the lower court despite this acknowledgment of its serious shortcomings.

If a death sentence is upheld on appeal, the President may exercise his prerogative of clemency. However, he seldom does so, and the commutation of the death sentences imposed on Orton and Vera Chirwa was a rare exception.

The death penalty is mandatory for prisoners convicted of murder or treason, and is optional for rape. Anyone convicted of robbery with violence, house-breaking or burglary must be sentenced either to death or to life imprisonment. Statistics on the use of the death penalty are not readily available. However, it is estimated that at any given time approximately 70 male prisoners are held under sentence of death at Mikuyu Prison near Zomba. Women condemned to death are held at Zomba Central Prison. In mid-1992 Amnesty International had the names of 45 prisoners believed to be under sentence of death at Mikuyu and Zomba Prisons. It is believed that approximately 30 prisoners a year are hanged, in three batches, by a visiting executioner from South Africa.

The "traditional courts" fail even remotely to conform to international standards for a fair trial. Aside from all their procedural abnormalities, the central fact that the judges are administrative officers of the executive arm of government means that they cannot be independent. The effect is that none of those sentenced to death and executed in Malawi for the past 20 years or more have received a fully fair trial; many may have been innocent of the offences for which they were convicted.

## **Human rights and Malawi's international obligations**

Malawi has not yet ratified the key international human rights instruments, such as the International Covenant on Civil and Political Rights (with its two Optional Protocols), which protects the right to life, the right to freedom of expression, the right to fair trial and other fundamental rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In 1990 Malawi ratified the African Charter on Human and Peoples' Rights, yet the government has taken no steps to incorporate its provisions into national law - still less into practice. One High Court application in the case of Chakufwa Chihana used the provisions of the Charter in support of its arguments - yet the judge who heard the suit was unaware that Malawi was even party to the Charter.

For years Malawi was indifferent to international criticism of its human rights record. In the past two years, this attitude has changed in some respects, largely because the principal aid donors have linked aid explicitly to respect for human rights. In 1991 more than 100 political detainees were released. In 1992, after the suspension of non-humanitarian aid, more prisoners were released, the ICRC was admitted to the prisons, the detention regulations were reformed, and the referendum was announced. Yet these reforms remain essentially cosmetic. As documented in this report, the harassment and imprisonment of the opposition continues.

International attention is also focussed on the forthcoming referendum in Malawi scheduled for 14 June 1993, with concern whether this will be free and fair in accordance with international standards, particularly those set out by the United Nations as explained above. Many of these issues fall outside Amnesty International's mandate. Thus, for example, Amnesty International takes no position on the process of polling or electoral registration. However, the question of fairness in the referendum revolves centrally around the question of freedom of speech. Evidently freedom of speech has not been fully guaranteed during the referendum campaign so far. The repeated criminal charges, imprisonment, ill-treatment and death threats against multi-party campaigners are of great concern to Amnesty International.

One indicator of a government's commitment to human rights is the access it allows to the country to human rights organizations. Malawi has for many years been a "closed country" to Amnesty International for the purpose of visiting the country to discuss human rights concerns with the government or investigate the human rights situation. In 1983 an Amnesty International representative was barred from attending the appeal against conviction of Orton and Vera Chirwa, and again in 1992 Amnesty International was not allowed to send an observer to Chakufwa Chihana's trial. In February 1993 Amnesty International again formally approached the Malawi government with a proposal to send a delegation to visit the country, believing it important to assess the changing situation on the spot and to establish at first hand whether rights to freedom of expression and association were being respected sufficiently to allow a fair referendum vote. In April Amnesty International received the reply that "the Government of the Republic of Malawi has not been able to approve the proposed mission".

## **Amnesty International's recommendations**

Amnesty International urges the Malawi Government to take a number of steps to guarantee unfettered enjoyment of the right to freedom of expression and other basic human rights:

- Release Chakufwa Chihana and any other prisoners of conscience imprisoned solely for non-violent advocacy of political opinions, and withdraw all criminal charges in cases involving non-violent expression of views.
- Initiate an independent review of the cases of all other political prisoners, such as Gwanda Chakuamba Phiri, Fred Kazombo Mwale, Nelson Mtambo, Sidney Songo, Ntwana Mlombwa, and any other political prisoners detained without trial or imprisoned after unfair trials.
- Initiate a prompt and impartial investigation into all reports of torture and ill-treatment of prisoners, deaths or prisoners in custody and attacks and death threats by members of the security forces, with a view to bringing those responsible to justice.
- Repeal all laws which make the non-violent expression of political opinion an imprisonable offence, including Sections 50 and 60 of the Penal Code, and relevant sections of the Protected Flags, Emblems and Names Act and the Preservation of Public Security Act.
- Repeal all sections of the Preservation of Public Security Regulations providing for administrative detention without charge or trial.

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- Repeal the Traditional Courts Act and return the jurisdiction of capital cases to the normal courts.
- Commute all death sentences and initiate a review of the death penalty with a view to its eventual abolition.
- Uphold the rights guaranteed by the African Charter on Human and Peoples' Rights (which Malawi has ratified), and ratify the key international human rights treaties, particularly the International Covenant on Civil and Political Rights (with its two Optional Protocols), the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.