

**EXTERNAL (for general distribution)**

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**UA 284/93     Death Penalty**

**20 August 1993**

**MALAWI:     Foster Azele Mlombwa**

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Foster Azele Mlombwa, who was sentenced to death following an unfair trial by the Central Region Traditional Court in April 1993, could face execution if his appeal to the Traditional Court of Appeal in Lilongwe fails on 25 August 1993. Amnesty International has also received information that the appeals of other death row prisoners are currently being heard. If their appeals are unsuccessful they can seek clemency from the President, which is rarely granted.

Amnesty International's concern that Foster Azele Mlombwa and others may be executed is intensified because there are reports that executions in Malawi take place at specific times of the year, one of which may be September. Although information on the use of the death penalty in Malawi is difficult to obtain there are reportedly over 100 people currently under sentence of death.

Foster Azele Mlombwa, former Malawi Congress Party (MCP) chairman for Dedza district was arrested on 10 December 1992 and charged with the murder of a police officer on 9 December 1992. He was reportedly taken to the local police station where he was beaten with an iron bar until he lost consciousness. In April 1993 he was sentenced to death by the Central Region Traditional Court.

He has recently been moved from Mikuyu Prison in Zomba, where his family had access to him, to a prison in Lilongwe.

Malawi's "traditional courts" constitute a separate judicial system parallel to the ordinary courts. These courts, which hear capital cases, respect none of the essential guarantees of fair trial. The independence and impartiality of the courts are open to question: the judges are unqualified traditional leaders appointed by the President, are led by a qualified lawyer and have no security of tenure. Procedural matters and rules of evidence are entirely at the discretion of the court and defendants have no right of legal representation. Those convicted in a "traditional court" may only appeal against a sentence if the Minister of Justice agrees and such an appeal may only be heard within the "traditional court" system, not by the Supreme Court. Legal representation is also not permitted in the Court of Appeal. The failure of "traditional courts" to conform to international standards for fair trial ensures that none of those sentenced to death and executed in Malawi for the past 20 years or more have received a fully fair trial.

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman and degrading treatment or punishment, as proclaimed in the Universal Declaration of Human rights.

**RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express and airmail letters either in English or in your own language:**

- urging that the death sentence passed on Foster Azele Mlombwa and all other outstanding sentences be commuted;

- stating that Amnesty International unconditionally opposes the death penalty in all cases on the grounds that it is a cruel, inhuman and degrading punishment and violates the right to life;

- expressing concern at the unfairness of trials in "traditional courts" which fall short of internationally recognized standards of fair trial;

- urging that the death penalty be abolished in Malawi and that in the meantime Malawi should abide by the United Nations Economic and Social Council Resolution of May 1989 for the Implementation of the safeguards guaranteeing the protection of the rights of those facing the death penalty, which applies to all UN member states;

**APPEALS TO**

1) His Excellency Life-President  
Ngwazi Dr H Kamuzu Banda  
Office of the President  
Private Bag 301  
Lilongwe 3, Malawi

**Salutation: Your Excellency**

**Telegrams: Life-President Banda, Lilongwe, Malawi**

**Telexes: 44389 PRES MI, 44113 EXTERNAL MI**

**Faxes: + 265 731878**

2) Mr John Tembo  
Minister of State  
Office of the President  
Private Bag 301  
Lilongwe 3, Malawi

**Salutation: Dear Minister**

**Telegrams: Minister of State Tembo, Lilongwe, Malawi**

**Telexes: 44389 PRES MI, 44113 EXTERNAL MI**

**Faxes: + 265 731878**

3) Mr Chimango  
Minister of Justice  
Ministry of Justice  
Private Bag 333  
Lilongwe 3, Malawi

**Salutation: Dear Minister**

**Telegrams: Minister of Justice Chimango, Lilongwe, Malawi**

4) Mr Viliera  
Attorney General  
Attorney General's Chambers  
Ministry of Justice  
Private Bag 333  
Lilongwe 3, Malawi

**Salutation: Dear Attorney General**

**Telegrams: Attorney General Viliera, Lilongwe, Malawi**

**Telexes: 44766 JUSTICE MI**

**COPIES OF YOUR APPEALS TO:**

1) Mr Justice Richard Banda  
Chief Justice  
High Court of Malawi  
Box 30244, Chichiri  
Blantyre 3, Malawi

2) Mr Temwa Nyirenda  
Chairman of the Law Society  
Box 2420, Blantyre, Malawi

3) Newspaper:  
Mr Ken Lipenge  
The Daily Times

Private Bag 39  
Blantyre, Malawi

and to diplomatic representatives of Malawi accredited to your country

**PLEASE SEND APPEALS IMMEDIATELY.** Check with the International Secretariat, or your section office, if sending appeals after 1 October 1993.