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# £MALAWI

## @Recent Releases of Political Detainees - but prisoners of conscience remain

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**SUMMARY**

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Between January and May 1991 the Malawi authorities released 88 political detainees held without charge or trial. Only 18 were previously known to Amnesty International, among them 16 prisoners of conscience, including George Mtafu, Malawi's only neuro-surgeon, and Jack Mapanje, an internationally renowned poet. It is not known how many of the those previously unknown to Amnesty International were prisoners of conscience. Amnesty International has welcomed the releases which are an important step towards improving the human rights situation in Malawi.

Amnesty International is seriously concerned, however, about many other political prisoners who remain in jail. Over 100 political detainees are believed to be still held without charge or trial. Those known to Amnesty International include 11 the organization has confirmed to be prisoners of conscience and 12 others whose cases the organization is continuing to investigate as possible prisoners of conscience. Among those remaining are Martin Machipisa Munthali, who has been in prison since 1965, and Kalusa Chimombo, detained without charge or trial since 1978. Amnesty International is also concerned about the continuing imprisonment of the prisoners of conscience Vera Chirwa and her husband Orton who have been serving life sentences since an unfair trial in 1983.

Legislation remains in force which falls short of international standards safeguarding human rights, such as the 1965 Public Security Regulations, which allow indefinite detention without charge or trial. Until these regulations are repealed, the releases could be reversed overnight on the whim of those in authority. Amnesty International is also urging the Malawi Government to ratify a number of international human rights treaties, which would

confirm the government's commitment to improving respect for human rights in the international arena.

This report summarises a 6-page document, *Malawi: Recent Releases of Political Detainees - but prisoners of conscience remain* (AI Index: AFR 36/04/91), issued by Amnesty International in June 1991. Anyone wanting further details or to take action on this issue should consult the full document.

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# **MALAWI**

## **Recent Releases of Political Detainees - but prisoners of conscience remain**

In late 1990 the Malawi authorities began a review of detentions under the Public Security Regulations of 1965, which permit indefinite administrative detention without charge or trial.

In early January 1991 four political detainees were released, the first sign that Malawi might be beginning to translate its international obligations to respect human rights into action. Those released in January were Margaret Marango Banda, a prominent laywoman in Malawi's Anglican Church who was detained in July or August 1988, Blaise Machira, a former lecturer at the University of Malawi who was arrested in April 1988, William Masiku, the former general manager of the state-owned Agricultural Development and Marketing Corporation detained in 1980, and Dr George Mtafu, the country's only neuro-surgeon who was detained on 28 February 1989.

A second batch of 83 political detainees were released on 18 February 1991, among them 13 prisoners of conscience and others known to Amnesty International. Several prisoners from the north of Malawi, many of whom were arrested in early 1989, were among those set free. They included the prisoners of conscience Thozza Khonje, an area manager of the state-owned Sugar Company of Malawi, and Peter Mkandawire, a teacher, who were arrested for criticizing the government's decision to transfer northern teachers back to their home areas, a move which was part of a clampdown on Malawians from the north. Others released included Brown Mpinganjira, the government's Deputy Chief of Information arrested in 1986, and Ishmael Mazunda, a lecturer at a mission teaching hospital, arrested in November 1989. Among the dozens of other administrative detainees who were released were many whose cases were not previously known to Amnesty International; consequently it is unclear whether they were prisoners of conscience.

On 10 May 1991 Jack Mpanje, Malawi's foremost poet, was set free. He had been in detention since 25 September 1987, apparently because the increasingly political themes of his poetry met with official disapproval.

Amnesty International welcomes these releases, the most numerous and significant in Malawi for more than 10 years. Malawi's accession to the Organization of African Unity's (OAU) African Charter on Human and Peoples' Rights in February 1990 carried with it the international obligation to guarantee the rights enshrined in the Charter. The releases in the first five months of 1991 suggest that the authorities may be beginning to translate these obligations into action.

Amnesty International is urging the government to confirm that the releases are unconditional and that every effort is being made to ensure that former political prisoners are able to resume life unhindered by restrictions on their employment, including the right to return to the jobs they were holding before their arrests. Amnesty International is also urging that no restrictions should be placed on their places of residence or freedom of movement.

### **Continuing Political Imprisonment**

While welcoming the releases, Amnesty International remains seriously concerned that many political prisoners are still behind bars and repressive legislation remains in force. Political imprisonment over the years has created a climate of fear and allows arbitrary detention to flourish, particularly as a result of unsubstantiated denunciations of accusation being made without being tested by the courts. Amnesty International has learned, for example, of a Zambian woman arrested in late April 1991 and accused of prostitution and spreading AIDs. It is unclear whether she was formally detained, but she remained in prison for at least 10 days without any formal charges being brought against her. She was reportedly denounced by a government official in Mchinji whose advances she had rejected.

There are 23 political detainees known to Amnesty International who remain in prison. It is believed, however, that there may be over 100 other political detainees in prison in Malawi. Those known to Amnesty International include Martin Machipisa Munthali, who was sentenced to 11 years' imprisonment in 1965 for allegedly smuggling arms into Malawi and kept on in detention after completing his sentence in 1975. L.E. Chaloledwa, who was detained in 1977, reportedly because of his family relationship with an exiled cousin of Life-President Dr Hastings Kamuzu Banda who was regarded as an opponent of the government, remains in prison. Amnesty International regards him as a prisoner of conscience. Kalusa Chimombo, another prisoner of conscience detained since the late 1970s, was a teacher and a prominent member of the Teacher's Association of Malawi. His alleged "crime" was to refer in a speech to the Malawian Head of State as "President Banda" without mentioning his official title of Life-President. Lister Muwamba has been detained since June 1986 for allegedly being a supporter of Orton Chirwa, the leader of the illegal opposition Malawi Freedom Movement (MAFREMO), who is himself a prisoner of conscience. John Malesa has been in detention since December 1987, reportedly arrested for attending a meeting at which calls were made for the release of Orton Chirwa and Vera Chirwa, his wife. Several northerners arrested in the first half of 1989 remain detained, among them Joseph Manjanga, Dany Muhango and Boston Phiri.

It is not clear whether the cases of these prisoners have already been reviewed and a deliberate decision made to keep them in detention, or whether the cases are yet to be

considered. Amnesty International has learned, however, that the veterinarian Goodluck Mhango's release was considered and then rejected. Goodluck Mhango was arrested in September 1987 shortly after his journalist brother, the late Mkwapatira Mhango, who was in exile in Zambia, published an article critical of the policies of the Malawi Government in a foreign magazine. Amnesty International regards Goodluck Mhango as a prisoner of conscience imprisoned solely because of his family relationship to a prominent critic of the Malawi authorities, and is calling for his immediate and unconditional release. In October 1989 agents of the Malawi Government are alleged to have been responsible for the firebombing of Mkwapatira Mhango's home in Lusaka, an attack which led to his death and that of his two wives and seven of his children. The Malawi authorities have denied responsibility.

The review of political detainees that has been initiated has not encompassed the situation of political prisoners who have been tried and sentenced. The best known are the prisoners of conscience Vera Chirwa and Orton Chirwa, a former Minister of Justice, who have been imprisoned since their alleged abduction from Zambia in December 1981. Vera Chirwa and her husband Orton fled into exile in 1964. They were both sentenced to death for treason in 1983 after a grossly unfair trial in the Southern Regional Traditional Court. The National Traditional Court of Appeal upheld their sentence, despite making grave criticisms of the conduct of their trial by the lower court. In 1984 their sentences were commuted to life imprisonment by Life-President Banda. Both Vera Chirwa, who is now 65 years old, and Orton Chirwa, who is now 72, are reported to be in poor health. Amnesty International is appealing to the Malawi authorities to release them and all other prisoners of conscience immediately and unconditionally.

### **Human Rights Guarantees**

The releases that have been taken place so far, while themselves a very positive development, are essentially remedial measures which partially correct injustices of the past. Malawians remain subject to an array of repressive legislation which falls far short of international standards safeguarding human rights. Improvements in the situation of human rights are bound to remain superficial as long as this legislation remains in force. Amnesty International continues to be concerned, for example, by the 1965 Public Security Regulations which provide for administrative detention without charge or trial. The regulations enable the Life-President "to make an order against any person directing that he be detained" on the grounds that he or she is a threat to public order. Such a detention order should be reviewed by the Life-President at six-monthly intervals. They further provide that any "authorized officer" may arrest any person, without warrant, if the officer believes there are grounds which would justify the person being served with a detention order. Since 1965 the Malawi Young Pioneers, a paramilitary youth brigade of the Malawi

Congress Party, the sole legal political party, have had the status of "authorized officers", and have been responsible for many of the arbitrary arrests that have taken place. Detainees arrested by an "authorized officer" may be held for up to 28 days while decisions are taken on whether to serve them with a detention order.

The Public Security Regulations contain only the most limited opportunities for the review of cases of detainees. To make matters even worse, until recently implementation of these measures has been virtually non-existent. The 28 day provision, for example, has frequently been disregarded, with suspects being held for long periods without being served with a detention order. Additionally, individuals served with detention orders have gone for years without their cases being reviewed by the Life-President. Amnesty International welcomes the fact that the authorities have instituted a review process, a measure which was long overdue.

Amnesty International remains concerned, however, about the terms of the Public Security Regulations. Amnesty International's concern is based on the failure of the regulations to meet international standards safeguarding human rights. The United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN General Assembly in 1989, lays down standards which apply to all countries. The Principles, for example, require that following arrest a detainee must be brought to an independent and impartial hearing by a judicial or similar authority which is empowered to review the detention and at which the detainee has the right to present his or her case. The detainee should have the right to legal representation by the lawyer of his or her choice and should also have the right to challenge the lawfulness of their detention through an application for *habeas corpus* to an independent and impartial judicial or other authority. The Public Security Regulations contain none of these safeguards. The limited review process which does exist does not satisfy the criteria of either promptness or independence and there is no legal channel open for a detainee to challenge the grounds or continuation of his or her detention. At no stage, therefore, are the authorities required to demonstrate there are genuine reasons for detention. Amnesty International urges the government to repeal the Public Security Regulations. Until this legislation is removed from the statute books the threat of arbitrary imprisonment will continue to curtail freedom of conscience.

Although the Public Security Regulations are the best known and most widely used of the various repressive laws at the disposal of the authorities, other laws also provide strict penalties for actions which might incur the disapproval of the authorities. Also of concern to Amnesty International is the 1973 amendment to the Penal Code (Act No. 11) which provides for a sentence of life imprisonment for communicating "false" statements, information, reports or rumour which may be harmful to the good name of Malawi to anyone outside of the country who might be expected to broadcast or publish it. The

amendment is essentially subjective and open to abuse by authorities seeking to control the flow of information. The repeal of repressive legislation would be an important demonstration of commitment to fundamental freedoms and would represent a significant step towards making the rights guaranteed by the African Charter enforceable in national law.

### **The Ratification of International Human Rights Standards**

Amnesty International is continuing its calls on the Malawi Government to ratify other worldwide human rights instruments which complement the African Charter. The organization has recommended that Malawi ratify the United Nations (UN) International Covenant on Civil and Political Rights (ICCPR) which protects fundamental freedoms such as the right to life, the right to freedom of conscience, the right to freedom from torture and ill-treatment, and the right to a fair trial, and the two Optional Protocols to the ICCPR, the first permitting individuals to submit communications concerning violations of the rights enshrined in the ICCPR to a Human Rights Committee established by the covenant, and the second aiming at abolishing the death penalty. Amnesty International recommends that Malawi should also ratify the International Covenant on Economic, Social and Cultural Rights and become a party to the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment which is an important international move towards the worldwide eradication of torture.

### **Conclusion**

Amnesty International welcomes the releases that have taken place between January and May 1991, which the organization regards as an important step towards an improved situation for human rights in the country. Nevertheless other prisoners of concern to Amnesty International, both prisoners of conscience and other political detainees, remain in prison. Amnesty International is urging the Malawi Government to release all other prisoners of conscience, both detainees and others serving prison sentences, and to repeal legislation that permits the violation of human rights - notably the 1965 Public Security Regulations. Until such legislation is repealed any improvement in the situation of human rights could be reversed overnight on the whim of those in authority. The organization also urges the Malawi Government to ratify other important worldwide human rights instruments.

INTERNAL (for AI members only)

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**MALAWI  
RECENT RELEASES OF POLITICAL DETAINEES - BUT PRISONERS OF  
CONSCIENCE REMAIN**

The attached EXTERNAL document entitled *Malawi: Recent Releases of Political Detainees - but prisoners of conscience remain* (AI Index AFR 36/04/91) is being issued as part of a SAN Action on Malawi. Detailed recommendations for SAN groups and coordinators are in the document entitled *SAN Action No. 2/91 Malawi: Recent Releases of Political Prisoners - but prisoners of conscience remain* (AI Index AFR 36/03/91).

There are two aims to these actions. First, to welcome publicly the release in early 1991 of 88 political detainees held without charge or trial, among them prisoners of conscience and other prisoners of concern to Amnesty International. Secondly, to maintain pressure on the Malawi authorities by publicly reiterating Amnesty International's continuing concerns about other prisoners of conscience and political detainees who remain in prison and about repressive legislation.

**RECOMMENDED ACTIONS**

Please ensure that all relevant people in the section have received copies for their attention, and that the document is centrally filed for future reference. In addition please undertake as many of the following recommended actions as possible.

1. Section Press Officers, SAN and country coordinators are requested to seek publicity for the EXTERNAL document with journalists, publications specializing in Africa and other appropriate contacts, particularly those which have previously expressed an interest in Malawi or publicized the cases of prisoners held in Malawi.
2. The USA, Japan, Nigeria, FRG, France, Netherlands, Denmark and UK Sections are asked to seek meetings with Malawian diplomatic representatives in their own country and with their own Foreign Ministers. The FRG, France, Netherlands, Denmark and UK Sections are requested to keep AI's European Community representative informed of any meetings. All Sections are asked to ensure that the Malawian diplomatic representative in their country and their own Foreign Minister receive copies of the EXTERNAL document.



**DISTRIBUTION BY THE IS**

This document has been sent direct by the IS to:

- SAN coordinators (for action)
- Malawi coordinators (for action)