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@Prison conditions, cruel punishments and detention without trial

Political prisoners in Malawi suffer prison conditions which are generally poor; in some cases these amount to deliberate cruel, inhuman or degrading treatment. Some convicted criminals are subjected to a special punishment regime - the so-called "hard-core program" - which is not only cruel, inhuman and degrading but seems to constitute a protracted form of extrajudicial execution. Prisoners under this regime are reportedly kept naked and chained to the floor, given minimal food, denied medical care and severely beaten. Many prisoners are reported to have died at Dzeleka and Nsanje, the two prisons where this program is in force. In addition, at least two political detainees have died in recent months, apparently because of poor conditions. Yet the authorities have not held inquests into any of these deaths, as required by Malawian law.

An unknown number of detainees were released in January 1992 - some reports indicated as many as 50, including at least two prisoners of conscience. The government's review of the cases of long-term political detainees had already led to the release of 88 prisoners in the first half of 1991, but a number of months had passed with out any outward sign that the review was continuing. More than 20 long-term political prisoners are still held, along with many other uncharged detainees - possibly more than 100. Amnesty International is also concerned about several more recent arrests with political overtones.

The use of detention without trial

Powers of detention under the 1965 Public Security Regulations are strictly arbitrary - there is no independent review of the reasons why an individual is detained. This often leads to the whimsical use of detention powers against critics. Thus Dr Matembo Nzunda of the university law department was detained after a letter of his had been published in the July 1991 issue of a Roman Catholic magazine, *Moni*. Dr Nzunda had criticized the recent arrest of a number of women for wearing or selling culottes - under Malawian law women are not allowed to wear trousers. Dr Nzunda and the magazine's publisher were held for two days. The August issue of *Moni* devoted its editorial column to an apology for "inadvertently" publishing Dr Nzunda's letter, which it described as "erroneous and misleading". At about the same time, the editor of the government-owned *Daily Times* was briefly detained for publishing a story criticizing the traffic police for allowing an untaxed vehicle on the road.

Frequently, however, detainees are held for much longer periods. Sometimes they are alleged to have engaged in party political activity - Malawi is a one-party state, in which no political activity is allowed outside the ruling Malawi Congress Party (MCP). Thus Malawi's longest-serving detainee, Machipisa Munthali, who has been imprisoned since 1965, is alleged to be a supporter of the exiled opposition and Orton Chirwa, who has been held since 1981, is leader of the banned Malawi Freedom Movement. But often their alleged offences are not identifiably political: one man was detained for buying tobacco from tenant farmers on land controlled by Life-President Dr Hastings Kamuzu Banda. Another has been held for 12 years because he criticized Life-President Banda for drawing multi-million dollar "unsecured

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loans" from state funds. A woman was held without charge for three years because she refused to keep silent about her brother's death in police custody.

Thus, although the release of detainees during 1991 and early 1992 was a welcome and significant step, the use of arbitrary detention remains systematic and ingrained. Repeal of the existing powers of detention is a precondition for eliminating this abuse from the Malawian system of government.

The legal basis for detention without trial in Malawi is provided by the 1965 Public Security Regulations, which allow the President to detain an individual indefinitely "for the preservation of public order". An authorized officer - which includes both police and the paramilitary Malawi Young Pioneers - has the power to arrest and detain an individual for up to 28 days if the person's conduct might warrant the imposition of a presidential detention order. In practice, however, this limit is seldom observed and prisoners awaiting presidential detention orders - who are known as TDOs (temporary detention orders) may themselves be detained indefinitely.

The regulations provide for a six-monthly review of detention orders by the President, although in practice this did not used to take place. In late 1990, however, facing increasing international criticism of their human rights record, the Malawian authorities began a review of detainees' cases. The first fruits of this were seen in January 1991 with the release of four prominent detainees: neurosurgeon George Mtafu, Margaret Marango Banda, an official of the national women's organization, academic Blaise Machila and Leyton Masiku, former executive chairman of the Agricultural Development and Marketing Corporation. This was followed in February 1991 by the release of a further 83 detainees, many of them individuals from the Northern Malawi who had been arrested after a purge of the civil service and teaching profession in 1989. Then, in May 1991, Malawi's best-known detainee was released - Jack Mapanje, a poet of international reputation. Since May 1991 there have been no further releases of long-term detainees.

The review provided by the Public Security Regulations is conducted by the detaining authority - the President himself. In practice, the review of detainees' cases in 1990 and 1991 appears to have been carried out by a committee chaired by the country's senior police officer, the Inspector General of Police. This review body does not satisfy basic international standards for the protection of 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, requires that after arrest a detainee must be brought before an independent and impartial hearing by a judicial or similar authority. This should be empowered to review the detention, with the detainee having the right to present his or her case. The review procedure in Malawi satisfies none of these requirements. By law it only operates six months after a detainee has been served with a detention order - in practice the first review may take place years after a detainee's arrest. It is not conducted by a judicial or quasi-judicial body but by the detaining authority itself. There is no review hearing at which the detainee can hear the allegations against him or herself; the review is conducted in private and the detainee is informed of the outcome. The Body of Principles guarantees legal representation to the detainee as well as the right to challenge the legality of the detention by applying for a writ of *habeas corpus*. In practice, Amnesty International does not know of a single instance in which a Malawian detainee has had access to a lawyer, while *habeas corpus* is a dead letter. Detainees themselves have no way of invoking the right, while families and lawyers are afraid to do so.

Prison conditions and ill-treatment

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Conditions in Malawian prisons are extremely poor. In part, no doubt, this is a consequence of the general level of poverty in the country, as well as severe overcrowding. In one prison, inmates have to sleep sitting up, back-to-back. However, there are a number of aspects of the bad conditions suffered by political detainees which appear to be a result of official policy: for example, the frequent ban on correspondence, the denial of reading or recreational materials, the frequent denial of medical attention and, above all, the imposition of cruel, inhuman or degrading punishments.

Most long-term political detainees are held at Mikuyu Prison near the southern city of Zomba. The only other prisoners at Mikuyu are those under sentence of death. The total number of inmates at present is probably around 100 - a figure which fluctuates depending on the number of detainees and whether executions have taken place recently. There are believed to be about 18 detainees in Mikuyu. Detainees and condemned prisoners are strictly separated.

No women are detained at Mikuyu. The only woman currently believed to be held under presidential order is detained at Maula Prison, in the capital Lilongwe, although other women detainees have been held at Zomba Central Prison, where most convicted political prisoners also serve their sentences. Prisoners with temporary detention orders may be held at any one of a number of prisons, of which the most important are Maula Prison and Chichiri Prison in Blantyre. Dzeleka Prison in Dowa was built in the 1960s, partly to house political prisoners - when he opened the prison Dr Banda said: "I will keep them there and they will rot." However, there are no longer believed to be significant numbers of political prisoners there. Instead, Dzeleka, along with Nsanje Prison in the far south of the country, has become a centre for a severe punishment regime imposed on long-term criminal prisoners.

This document is concerned with general prison conditions as they affect prisoners of conscience and poor conditions and punishments of prisoners of any sort which appear to constitute cruel, inhuman or degrading treatment or punishment. Amnesty International's greatest concern is the imposition of cruel punishments and the failure to provide adequate nutrition and medical care - which have resulted in prisoners' deaths - and in general the failure to conduct investigations into deaths of prisoners. In these and other respects the Malawian authorities are in breach not only of international standards but also of the country's own Prisons Act and Prison Regulations.

Living conditions

Detainees at Mikuyu Prison are held in one of four sections: A Section, B Section, D Section and New Building. These consist of large rooms sleeping up to 50 prisoners, depending on the number of detainees at any one time. Prisoners sleep on the floor and the number of blankets provided depends on the attitude of the prison warders, varying between one and four. B and D Sections have a flush lavatory in their sleeping quarters, while A Section and New Building have only a bucket overnight and a flush lavatory outside. There is one shower block for the whole prison and showers are taken twice a week. However, the water to the prison is often cut off and condemned prisoners are sent to fetch water in buckets. The danger of disease is considerable when flush lavatories without water are shared by up to 50 prisoners.

However, conditions at Mikuyu appear to be generally better than those at Chichiri and Maula, which are both described as being severely overcrowded. Former prisoners at Maula have described over 200 prisoners being held in cells built to accommodate 70. Prisoners held at Chichiri have described having

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to sleep sitting up, back-to-back, with no blankets. Prisoners would bribe the warders to get a space where they could sit against the wall.

Political prisoners at Zomba Central Prison are kept in small cells, usually in ones or twos. Male political prisoners have been reported to be kept in the punishment section. Often the number of blankets supplied is not adequate - one prisoner reported being given only one on her arrival. Flush lavatories often do not work and are a breeding ground for mosquitoes.

Untried political detainees wear the regulation prison uniform of loose shirt and shorts. The only exception to this rule is reported to be Aleke Banda, the former secretary general of the Malawi Congress Party, who is kept in generally better conditions at Mpyupyu Prison near Zomba.

Women prisoners in general face the additional hazard of rape and sexual harassment by male warders. Although the Prison Regulations lay down clear procedures for male warders to be accompanied by their female counterparts in dealing with women prisoners, in practice these safeguards do not appear to work. Pregnancies as a result of rape are reported to be common among women prisoners at Zomba Prison.

Diet

Nutrition of prisoners in Malawian prisons is generally grossly inadequate. Although the Prison Regulations specify in great detail the daily rations to be provided to all prisoners, these are never met in practice. It is reported that food rations are distributed on a basis which discriminates racially between black, white and Asian prisoners and it is clear that withholding of food is frequently used as a punishment.

A former medical specialist at Zomba General Hospital, who treated prisoners in the hospital's prison ward and at Zomba Central Prison, has described serious nutritional deficiencies which can be clearly attributed to lack of fresh vegetables and sources of protein:

"In prisoners eating little but maize meal it was common to find peripheral oedema secondary to hypoproteinaemia [abnormal decrease in blood protein] and vitamin deficiencies like pellagra. Five prisoners went blind from corneal damage due to vitamin A deficiency, and screening showed that more than half of all prisoners had some eye changes secondary to vitamin A deficiency.

"The conditions in prison farms and in detention centres are reputedly much worse."¹

Political prisoners fare slightly better than others for a number of reasons. One is that families of political prisoners are sometimes allowed to deliver food to the prison. However, this may not be shared with other prisoners, so only those detainees with families who live nearby are likely to benefit. Also, in many cases political prisoners are in effect prohibited from receiving visits.

Mikuyu Prison, where most long-term detainees are held, appears to provide a greater quantity of food than other, more overcrowded prisons, although the quality seems no better. Some "special" prisoners at Zomba Central Prison receive an extra meal a day with more vegetables and occasional meat. However, a woman from the United States who was held in Zomba Central Prison with prisoner of conscience Vera

¹ Paul Anthony Reeve, "Prisoners and doctors" [letter], *British Medical Journal*, 17 February 1990, 300: 470.
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Chirwa² has reported:

They told the American Embassy we were being fed fish, meat and vegetables... we never saw any meat or fish; Vera told me she hadn't had any in years.

She said that in fact they were fed on rice and beans, sometimes with cabbage and other rotten vegetables or fruit which they could not eat and threw away.

In Mikuyu detainees receive three meals a day. Breakfast consists of porridge. Lunch at 10am is *nshima* (maize meal porridge) and beans; supper at 4pm is the same as breakfast. The food is of poor quality: for example, the beans are infested with weevils. It is widely believed within the prison that prisoners are entitled to meat once a month, although they do not even receive that. In fact the Prison Regulations stipulate that there should be meat or fish daily, as well as fresh fruit and vegetables. Fruit and vegetables are rarely, if ever, provided.

The meals provided in other prisons are of similar quality. A political prisoner held at Chichiri has described receiving breakfast at 6am and lunch, the last meal of the day, at 11am. This consisted of *nshima* and barely cooked fish. The diet in Maula is reputedly even less adequate. A former prisoner there describes having received only one meal a day.

Visits and letters

The Prison Regulations state that a prisoner may write and receive one letter every four weeks, as well as receiving one visitor every four weeks. All incoming and outgoing letters are read by the prison authorities and may be stopped "if its contents are objectionable". In practice, political prisoners are often denied visits from families (as well as consultations with lawyers, which are almost unheard of) and letters are arbitrarily stopped.

Thus the detained poet Jack Mapanje received no family visits for 22 months after his arrest and prisoners of conscience Orton and Vera Chirwa were not visited for three years after their arrest.

Even when family visits are not denied they are difficult. Family members are threatened and fear that they will be arrested themselves.

One political detainee at Chichiri described receiving visits lasting 10 minutes - the Regulations specify 30 minutes - only if permission was obtained from the regional police headquarters. The visit consisted of the prisoner shouting over a wall and wire fence to his visitors.

Recreation and religion

² Orton Chirwa, the first Attorney General of Malawi, and his wife Vera Chirwa, a law lecturer, are leaders of the opposition Malawi Freedom Movement (MAFREMO). They were arrested in December 1981 on a visit from Tanzania, where they were in exile, to Zambia. They claimed that they were abducted by Malawian agents. They were charged with treason and in 1983 tried before a "traditional court" which refused them the right to a defence lawyer or to call witnesses and which ignored all international norms for fair trial procedure. They were convicted and sentenced to death, a verdict and sentence upheld on appeal. However, in June 1984 Life-President Banda commuted their sentences to life-imprisonment, after widespread international appeals on the Chirwas' behalf. Orton and Vera Chirwa are held in different sections of Zomba Central Prison and have no contact with each other. Amnesty International has adopted them as prisoners of conscience.

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Convicted prisoners in Malawian prisons are generally required to perform labour, but political detainees usually pass their days in the vicinity of their cells. There is no organized exercise or sport. A former prisoner at Chichiri has stated that exercise was specifically forbidden because it was regarded as training for escape.

All reading and writing materials are forbidden, with the exception of the bible and a hymn book. A prisoner found with a book or newspaper, or paper and pencil, is liable to severe punishment. Prison staff search cells at Mikuyu daily. The United Nations Standard Minimum Rules for the Treatment of Prisoners³ provide that prisoners should be allowed newspapers or a radio and that every prison should have a library.

The Standard Minimum Rules also state clearly: "Access to a qualified representative of any religion shall not be refused to any prisoner." The Prisons Act and Prison Regulations also provide for visits by ministers of religion but in less unequivocal terms. In recent years religious observance within Mikuyu has been forbidden and no minister of religion has been given admittance (although Life-President Banda is an elder of the Church of Scotland). Thus, for example, Jack Mapanje, a practising Roman Catholic, did not see a priest in more than three and a half years of imprisonment. The situation in other prisons appears to be the same. However, since Jack Mapanje's release a Roman Catholic chaplain has reportedly been allowed into Mikuyu.

Medical care and deaths in detention

Given the low nutritional status of prisoners and the poor sanitary facilities, it is not surprising that outbreaks of disease are frequent in Malawian prisons. Diarrhoea, malaria, hepatitis and Acquired Immune Deficiency Syndrome (AIDS) are all reported to be rife. The Prison Regulations make detailed provision for the supervision of prisoners' medical needs by a medical officer who, among other duties, is required to inspect the prison at least once a week, paying particular attention to sanitation and washing and cooking facilities. It is reported that in recent months, for the first time, a medical officer has visited Mikuyu weekly. However, in November 1991, Sylvester Phiri, a probable prisoner of conscience, died in Mikuyu of possible tuberculosis, apparently without receiving any medical attention. This suggests that even if the medical officer is visiting weekly he is not being allowed to carry out his functions properly.

Over the years, Amnesty International has received many other reports of political prisoners being denied medical attention or receiving inadequate care. In one recent case a possible prisoner of conscience suffering from a serious bladder infection was denied medical treatment. A senior Prisons Department official who visited the prison when the officer-in-charge was absent ordered that the prisoner be admitted to hospital. He then received the necessary treatment.

The American woman imprisoned with Vera Chirwa described how the rigours of prison life presented an obstacle to the treatment of even relatively minor ailments:

"Just before I left a cut in her foot became infested with worms because she has to walk barefoot. The cream prescribed by the doctor didn't help."

³ Adopted by the UN's Economic and Social Council in 1957 and again in 1977.
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Prisoners suffering from mental illness face particularly acute problems. Blaise Machila, a former university lecturer detained without charge from 1988 to 1991, is a diagnosed schizophrenic. The UN Standard Minimum Rules for the Treatment of Prisoners specify that prisoners who are mentally ill should be transferred to mental hospitals; Blaise Machila was kept at Mikuyu, often naked and in leg-irons.

Deaths in custody appear to be frequent. The Inquests Act states clearly that when a prisoner dies an inquest shall be held in all cases. It is the responsibility of the officer in charge of the prison to notify the coroner of a death, a responsibility which is underlined in the Prison Regulations. The Prison Regulations also make detailed specifications of the records to be compiled by the medical officer if a prisoner dies in custody. Yet there has not been an inquest or any other form of inquiry into any of the deaths of political detainees investigated by Amnesty International. It is unclear whether this is a failure of the prison administration or the judiciary.

The Prison Regulations also state that the officer in charge shall release the body of a dead prisoner to his family unless there are overriding reasons, such as public health, not to do so. In practice, dead prisoners are buried within prison compounds, despite requests from their families. This means not only that families are unable to carry out funeral rites, but also that they cannot arrange their own investigations into the death, such as an independent *post-mortem* examination.

The following cases each involve the death in custody of a prisoner of conscience (or possible prisoner of conscience). In none of them has an inquest been held.

• **Fred Sikwese**, aged about 40 years, was Principal Protocol Officer in the Ministry of External Affairs. He was in good health when he was arrested around 20 February 1989. With two other men, Frackson Zgambo and Benson Mkandawire, he was alleged to have passed confidential material to the South African press. When his mother and sister visited him in Maula Prison, Lilongwe, on 6 or 7 March 1989 he appeared very weak and yellow, as if suffering from jaundice. He may also have been tortured. He died in prison on 10 March. His family asked for his body for burial but were refused. Instead he was buried within the prison precincts on 11 March, without a family member present. It is reported that, much later, some bones said to be his remains were given to his family. Frackson Zgambo and Benson Mkandawire were detained without charge at Mikuyu Prison until January 1992. His sister Mary Sikwese was arrested for claiming that the police were responsible for her brother's death. She was detained without charge at Maula Prison, but was reportedly among those released in January 1992.

• **Msungama** was arrested in 1989 and detained without charge at Mikuyu Prison, apparently for buying tobacco from tenant farmers on land owned by President Banda (see the case of Laurenti Phiri, described below). He was asthmatic and had an inhaler which he was not allowed to keep in his cell overnight. In 1990 he died one night, probably as a result of an asthma attack.

• **Alec Kadango**, a Lilongwe businessman, died in Mikuyu Prison on 18 July 1991. He had been suffering from malaria and had reportedly been denied medical attention. He had been detained without charge since 1972.

• **Katanga Sani** reportedly died in police custody in Mangochi in November 1991. The previous month, five young women in this predominantly Muslim area had been arrested for dressing as men as part of a

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local initiation celebration. The Decency in Dress Act prohibits women from wearing trousers. The women were fined and detained at Mangochi police station pending payment. Katanga Sani, a local Muslim businessman, paid the fines but was arrested shortly afterwards and held incommunicado for more than a month. Eventually his family were allowed to visit him and found him in good health. Two days later his body was taken to Mangochi Hospital, where officials had been told that he had died in the night.

• **Sylvester Phiri** died in Mikuyu Prison on 26 November 1991. He had been detained without charge since 1986, apparently suspected of supporting the Malawi Democratic Union, an exiled opposition group. The cause of death is unknown, although he is reported to have been suffering from a severe cough, vomiting blood and extreme thinness - all possible symptoms of tuberculosis. It is reported that he received no medical treatment.

Punishment

The Prisons Act and Prison Regulations provide for a number of punishments for breaches of discipline and the regulations. These include some, such as corporal punishment, which are forbidden by the UN Standard Minimum Rules for the Treatment of Prisoners and others, such as solitary confinement and reduction of diet, which Amnesty International also considers to be forms of cruel, inhuman or degrading punishment. However, there appears to be a parallel system of punishments, operating throughout the Malawian prison system, which consists of little but cruel, inhuman or degrading punishments. It is not simply that the rules governing punishments are sometimes not adhered to: evidence gathered by Amnesty International suggests systematic use of particular types of cruel punishment throughout the prison system.

Prisoners in Malawi are frequently punished by the use of leg-irons and handcuffs. The UN Standard Minimum Rules for the Treatment of Prisoners forbid the use of leg-irons in all circumstances, as well as prohibiting the use of legitimate means of restraint, such as handcuffs or strait-jackets, as forms of punishment. The Malawi Prison Regulations allow the use of leg-irons as a restraint, but similarly forbid the use of any "mechanical restraint" as a form of punishment. Yet it appears that this is the commonest punishment in force in Malawian prisons.

A more serious variant is the system known as "cell punishment". This was reportedly inflicted on prisoner of conscience Orton Chirwa at Zomba Prison in May 1991 after the authorities claimed to have intercepted smuggled letters of his. He was kept in a squatting position in handcuffs and leg-irons, which were chained to an iron bar behind his knees. He remained in this position for two days, with no lavatory or other sanitary facilities. Orton Chirwa, who was aged 72 at the time of the punishment, is said to still be weak with its effects.

Another political prisoner, Gwanda Chakuamba, was reported to have been kept in handcuffs and leg-irons at Zomba Prison in the early 1980s after the authorities claimed to have uncovered a plot to help him escape from jail. It is likely that he suffered the same punishment as Orton Chirwa when the authorities claimed that they had intercepted smuggled letters from Gwanda Chakuamba too in May 1991.

"Cell punishment" itself has variants. The use of *ndima* or the "dark cell" has been reported from both Chichiri and Mikuyu - prisoners are kept in total darkness without any natural or artificial light. Prisoners

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undergoing "cell punishment" may be denied food and water or have buckets of cold water thrown at them from time to time.

Leg-irons and handcuffs are used for long periods, not necessarily as punishments for specific acts, but with no conceivable security rationale either. Thus Orton Chirwa and his son Fumbani were each kept in solitary confinement, permanently handcuffed and with their legs shackled to an iron bar between March 1982 and December 1983. For the previous three months, in police custody, they had been handcuffed every night between 6pm and 6am.

The case of Blaise Machila has already been described - a diagnosed schizophrenic was kept for long periods in leg-irons at Mikuyu. Another political detainee at Mikuyu, Kaliya Mudiyeysani Mwale, is reported to have been kept permanently in leg-irons between September 1981 and May 1986.

The "hard-core program"

The most brutal punishment in Malawian prisons is directed not at political detainees but at certain criminal prisoners described by Malawian officials as "hard-core" cases, the aim being not to enforce prison rules but to provide an extrajudicial solution to the problem of crime. Many prisoners are believed to have died as a result of the so-called "hard-core program", but evidence is very difficult to obtain. Unofficial estimates claim that hundreds of prisoners have died, although Amnesty International cannot confirm these claims. The "hard-core program" is carried out at two prisons - Nsanje and Dzeleka - where political prisoners are not usually held. Malawi is in any event a country where human rights monitoring is likely to carry heavy penalties. The "hard-core program" is particularly sensitive and shrouded in secrecy. Amnesty International and other human rights organizations have been refused permission to visit Malawi for many years and no humanitarian organization, such as the International Committee of the Red Cross, is allowed access to Malawian prisons. However, Amnesty International has received remarkably similar and precise accounts of the "hard-core program" from a wide variety of sources. Some accounts include names of prisoners alleged to have died as a result of the punishment. It has proved impossible to corroborate the names, but the nature of the torture inflicted under the "hard-core program" is clear.

In early 1983 the then Inspector General of Police, Macmillan Kamwana, announced a crackdown against crime. In February 1983, 13 prisoners considered to be "hard-core" criminals are reported to have been transferred to Nsanje Prison, which is in a low-lying and malarious area of southern Malawi. There they were kept naked and each manacled to an iron ring on the floor. They were only fed one-quarter rations. Two prisoners are reported to have died as a result of this treatment. The 11 survivors were released in August 1983 and apparently told to go and tell their friends in the criminal community about their treatment.

In November of the same year Inspector General Kamwana reopened Dzeleka Prison at Dowa in the Central Region. This had been built in the 1960s to house political detainees, but now became the second centre for what became known as the "hard-core program". Details of the program as described to Amnesty International vary slightly but its essential features are clear. Habitual criminals near the end of their court-imposed sentences are transferred to Dzeleka or Nsanje. On arrival they have to run a gauntlet of prison warders with clubs, sticks and iron-bars, who beat them severely. Some die as a result of these beatings. The survivors are stripped naked, chained to the floor, given minimal food and denied medical

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attention. They may be subjected to further beatings later.

The warders who administer this program are an elite, drawn from prisons throughout the country. It has been suggested that they are also members of a traditional secret society, who are bound by an oath of secrecy. However, although the exact details of the hard-core program are shrouded in mystery, its existence is common knowledge in all Malawian prisons, since other prisoners observe their fellow inmates being taken away to Dzeleka and Nsanje and often failing to return. Families of prisoners who "disappear" in this manner are given no explanation of the fate of their relatives; sometimes a bundle of clothes may be returned to them.

The general climate of fear - and specifically the fear that they themselves may be detained - prevents families from taking further action. In a rare case, the father of a man from Thyolo who had died in Nsanje Prison in February 1986 is reported to have instructed a lawyer to take action against the authorities. A senior official from the Ministry of Justice reportedly ordered that no investigation be conducted and the matter was dropped.

The "hard-core program", like cell punishment and other abuses, is not the result of isolated excesses by individual prison staff. There can be little doubt that it is a matter of official policy sanctioned by the highest officials responsible for Malawi's prisons.

Detention without charge of prisoners of conscience and others

According to information received by Amnesty International, 18 long-term political detainees under presidential detention order remain at Mikuyu Prison since the death in November 1991 of Sylvester Phiri. There are at least two presidential detainees held at other prisons as well as an unknown number - possibly dozens - of prisoners held under temporary detention orders. Amnesty International has highlighted a number of these cases in previous publications.⁴ Most of the following cases refer either to people who have been arrested in recent months or to those whose cases have not been described in previous Amnesty International documents.

● **Martin Machipisa Munthali**, aged about 70, is a veteran of the Malawi Congress Party in the struggle for independence from Great Britain in the 1950s and early 1960s. He served as a bodyguard to Dr Banda before independence, but went into opposition after the "Cabinet Crisis" of 1964 in which Dr Banda, then Prime Minister, expelled dissenting ministers from the Cabinet. In 1965 Machipisa Munthali was arrested, charged and found guilty of illegal possession of arms. However, after he had served his prison sentence, in the early 1970s, he was not released but was detained under the Public Security Regulations. He remains in detention at Mikuyu Prison, Malawi's longest serving political prisoner. Amnesty International considers Machipisa Munthali to be a prisoner of conscience and is calling for his immediate and unconditional release.

● **Tukulani Sikweya Banda**, aged in his 50s, was arrested in 1979. A stores manager for the national railways, he was apparently detained because he was suspected of passing information to relatives outside the country, including his uncle, Kaphwili Banda, a leading government opponent living in exile in

⁴ See for example: *Malawi: Recent Releases of Political Detainees - but prisoners of conscience remain* (AI Index AFR 36/04/91), June 1991; *Malawi: International Commitments - National Realities* (AI Index AFR 36/06/90), September 1990; *Malawi: Human Rights Violations 25 Years after Independence* (AI Index 36/10/89), October 1989. Amnesty International February 1992 AI Index: AFR 36/03/92

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Zambia. It is believed that Tukulani Sikweya Banda may have faced a criminal charge and been acquitted in 1979. He has been held without charge at Mikuyu Prison since then. Amnesty International considers that he is a prisoner of conscience and is calling for his immediate and unconditional release.

• **Owen Jumo**, aged in his 40s, was employed as a driver, first by Albert Muwalo Nqumayo, secretary general of the ruling MCP who was executed for alleged treason in 1977, and later for Gwanda Chakuamba Phiri, a government minister sentenced to 22 years for possession of arms in the early 1980s. Owen Jumo was arrested in 1979. He has not been charged with any criminal offence but is detained without charge at Mikuyu Prison under the Public Security Regulations. He is reported to have suffered severe mental illness as a consequence of his imprisonment. Amnesty International is calling for Owen Jumo to be released if he is not be charged with a recognizably criminal offence and tried promptly and fairly.

• **Chikondi and Taimu**, both aged in their 50s and both employees of State House, the Life-President's official residence, were arrested in early 1989 and charged with theft - they were alleged to have stolen blankets and other items from State House. They were tried before the Southern Regional Magistrates Court in Blantyre in February or March 1989 and acquitted. The magistrate who heard their case, Stanford Munyenembe, fled to Zambia shortly afterwards to avoid arrest. Chikondi and Taimu were both rearrested outside the court and detained without charge under the Public Security Regulations. The apparent reason for their detention is their knowledge of the inner workings of the President's office. They are held at Mikuyu Prison. Amnesty International is calling for their release if they are not be charged with a recognizably criminal offence and brought to trial promptly and fairly.

• In May 1991, the Malawian authorities arrested a number of people who they said had been involved in smuggling correspondence from two prominent political prisoners: Orton Chirwa, leader of the banned Malawi Freedom Movement, who is serving a life sentence for treason, and Gwanda Chakuamba, a former Cabinet Minister serving a 22-year sentence. Despite the provision of Article 37 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, which gives the right to correspond with family and others, political prisoners in Malawi are often not allowed to send or receive letters. Both Orton Chirwa and Gwanda Chakuamba are held at Zomba Central Prison. First to be arrested were two warders at the prison, named **Kumwenda** and **Chigwenembe**. Three adult children of Gwanda Chakuamba were also arrested, although it is reported that they were later released. Chigwenembe is believed to be held, probably without charge, at Chichiri Prison, Blantyre. Kumwenda is reported to be held incommunicado in an underground cell at Kanengo Police Station, Lilongwe, along with **Christopher Mwenelupembe** and **John Nyenga**, alleged supporters of Orton Chirwa who are said to have helped smuggle correspondence out of the country. Despite reports that Kumwenda, Christopher Mwenelupembe and John Nyenga had been killed in custody, subsequent reports suggested that they were in fact still alive although in danger of ill-treatment.

Orton Chirwa was subjected to two days solitary confinement in leg-irons and handcuffs as punishment for the discovery of his letters (see above, page 11).

• **Aleke Kadonaphani Banda** was a prominent member of the Malawi Congress Party in the 1960s and early 1970s, becoming its secretary general. In 1972 an article in the *Times of Zambia* identified him as a rising star in Malawian politics. The MCP secretary general would become interim president on the death of Life-President Banda - however, speculation on President Banda's successor is strenuously

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discouraged. Apparently as a result of the *Times of Zambia* article, Aleke Banda was removed from his post and ordered to return to his village. According to some reports he was held under house arrest for a period in 1973-4.

In 1975 Aleke Banda was appointed managing director of Press Holdings Ltd (now known as Press Group), of which President Banda was chairman. In January 1980 Aleke Banda wrote to the President, questioning the latter's withdrawal of 6 million kwacha (US\$000) from Press Holdings accounts at the National Bank of Malawi and the Commercial Bank of Malawi. In his reply, President Banda described the withdrawal as an "unsecured loan" which had the approval of John Tembo, then the chairman of the Reserve Bank of Malawi and uncle of the "official hostess", the President's companion Cecilia Tamanda Kadzamira. A week later Aleke Banda was expelled from the MCP and arrested shortly afterwards. He remains in detention without charge at Mpyupyu Prison. Amnesty International has adopted him as a prisoner of conscience and is calling for his immediate and unconditional release.

A number of those imprisoned by the Malawian authorities, like Aleke Banda, are apparently being punished for criticizing alleged corruption or economic mismanagement. Sometimes, in reply to inquiries from Amnesty International, the Malawian authorities have suggested either that these individuals have themselves engaged in corrupt activities or that their cases are not of concern to a human rights organization because they are not "political". However, Amnesty International regards the imprisonment of individuals for criticizing corruption or independently exercising their professional judgment as a fundamental violation of freedom of expression and has adopted such individuals as prisoners of conscience. Thus, for example, Margaret Marango Banda, an official of the *Chitukuko Cha Amai mu Malawi* (CCAM) - Development of Women in Malawi, the national women's organization - was detained without charge at Zomba Central Prison from 1988 to January 1991, apparently because she criticized the misappropriation of the proceeds of sales by senior CCAM officials. Amnesty International adopted her as a prisoner of conscience. In other instances Amnesty International is unable to discover the exact nature of the allegations against an individual or the real reasons behind the detention. In such cases the organization calls on the Malawian authorities to release them unless they are to be charged with a recognizably criminal offence and tried promptly and fairly. This was the position that Amnesty International took on the case of Leyton (William) Masiku, the executive chairman of the parastatal Agricultural Development and Marketing Corporation, who was detained without charge - or explanation - from 1987 to January 1991.

Francis Maseka trained as an air mechanic and later rose to a senior position within Air Malawi Ltd, the country's national airline. In March 1991 he was one of a number of Air Malawi officials dismissed after changes in the senior management of the company. He was arrested and charged with corruption, although these charges were dismissed by the High Court in April 1991. However, Francis Maseka was not released from custody and was held without charge at Chichiri Prison, until late 1991. Similarly, Lucius Chikuni, Malawi's ambassador to South Africa, was arrested in November 1990 and faced criminal charges related to alleged over-invoicing of embassy expenses. He was brought to trial in early 1991 and acquitted, but rearrested and is believed to be still detained without charge at Maula Prison, Lilongwe.

Laurenti Phiri, a tinsmith, was arrested in 1989 for buying tobacco from tenant farmers of the Press Group, who are obliged to sell all their produce to the company. Laurenti Phiri was brought before a magistrate and fined for this offence but immediately rearrested and served with a detention order -

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presumably his purchase of tobacco which should have been sold to the President was deemed a politically subversive act. All Press Group shares are held by the Press Trust - of which President Banda is the principal trustee. Laurenti Phiri was held at Mikuyu Prison until January 1992.

Amnesty International's recommendations

On detention without charge

Amnesty International considers that many of those detained without charge in Malawian prisons are prisoners of conscience, held for non-violent political or religious beliefs, or for conscientious conduct of their jobs or professions. Such individuals should be released immediately and unconditionally. Amnesty International believes that all prisoners detained for political reasons should be released if they are not to be charged with a recognizably criminal offence and brought to trial promptly and fairly. In Malawi, this means that they should be tried before the High Court and not before the parallel "traditional court" system where judges are answerable to the Life-President, the accused are denied legal representation and the presumption of innocence and normal rules of evidence do not apply. Amnesty International considers that the review of detainees' cases being conducted by the detaining authority under the Public Security Regulations does not even approximate to the requirement of the UN 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.

On prison conditions and cruel punishments

Amnesty International is calling on the Malawian Government to issue clear public instructions forbidding torture and cruel, inhuman or degrading punishment in the country's prisons and to close Nsanje and Dzeleka Prisons immediately, pending an investigation of the "hard-core program", "cell punishment" and other cruel, inhuman or degrading punishments. This should be conducted by an independent judicial commission of inquiry whose working methods and findings should be public. Amnesty International also calls upon the Malawian Government to open its prisons to regular international inspection by a body such as the International Committee of the Red Cross. The practice in Malawian prisons - and where necessary the Prison Regulations - needs to be reformed to bring it into line with the provisions of the UN Standard Minimum Rules for the Treatment of Prisoners: for example, in forbidding corporal punishment, the "dark cell" (Article 31) and the use of leg-irons (33), providing a proper level of nutrition and regular medical attention (20, 22-26), providing regular exercise (21), books and newspapers (39-40) and religious observance (41-2) and allowing regular family visits and correspondence (37). All deaths in custody should be promptly investigated by an independent judicial authority as laid down in the Inquests Act. The Prisons Department should use the findings of inquests as the basis for improvements in conditions, for example in nutrition and medical care. If an inquest finds that there was criminal responsibility for a prisoner's death, the police and Attorney General's office should take steps to bring those responsible to justice.