
AMNESTY INTERNATIONAL NEWS SERVICE 34/94

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NEWS SERVICE ITEMS: EXTERNAL - MALAWI

PLEASE NOTE CORRECTIONS: See News Service 32/94 Kuwait item the title should read "AI CALLS FOR END TO HUMAN RIGHTS VIOLATIONS CONTINUING SINCE THE END OF THE IRAQI OCCUPATION IN 1991".

See News Service 33/94 Togo item, the very last line of the item should read "...they have not fulfilled their role effectively." SORRY!

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MALAWI: AMNESTY INTERNATIONAL URGING FOR HIGHEST STANDARDS OF HUMAN RIGHTS PROTECTION TO BE INCLUDED IN NEW CONSTITUTION

Amnesty International is appealing to all those involved in the current debate on the new Constitution for Malawi to ensure that it includes the highest possible standards of human rights protection. Many of the human rights violations of the past, which the organization has campaigned against since 1964, resulted from provisions in the previous Constitution and laws.

Malawi is in a crucial period of transition. Since the referendum in June 1993 that ended the one party state, the previous pattern of widespread serious human rights violations - which included imprisonment of prisoners of conscience, unfair trials, torture, executions and political killings - has been followed by important human rights reforms. These reforms have included a general amnesty for political prisoners and political exiles, suspending the Traditional Courts, reviewing all death sentences and allowing freedom of political association by replacing the one-party system. In November 1993 Amnesty International was able to visit Malawi for the first time in many years met government, non-governmental organizations and others to discuss human rights.

The National Consultative Council (NCC), a body of government and opposition leaders, is holding a Conference on 21 - 23 February aimed at producing a new Constitution. The Conference will discuss a draft Constitution drawn up by a Sub-committee of the NCC and make its own recommendations. The proposed Constitution will then be submitted to Parliament for ratification before late March. Elections are planned for mid-May.

This conference follows an earlier Symposium on the Constitution, organized by the Legal Resources Centre, the human rights unit of the Malawi Law Society, which Amnesty International delegates attended. The recommendations of the Symposium, which include the entrenchment of a Bill of Rights in the Constitution, will be formally submitted to the NCC for consideration at the conference.

The drafting of a new Constitution for Malawi presents an opportunity for ensuring that the highest standards in human rights protection are enshrined in the Constitution, based on relevant international and regional human rights standards. In November 1993 a Bill of Rights was inserted into the existing Constitution. However, it included extensive restrictions and provisions for derogations which significantly restricted the protection of human rights. Amnesty International is urging the repeal of all laws that infringe basic human rights, including sections of the Penal Code and the Preservation of Public Security Act. Although they were both amended in November 1993, the amendments were not comprehensive enough and still allow for the possible imprisonment or house arrest of peaceful critics of the government. Amnesty International is also recommending that the new constitution includes the principle that no amendment to the Constitution, no subsidiary law and no action by the executive may abridge or abrogate or abolish fundamental constitutional rights, freedoms and guarantees.

Amnesty International recommends that the new Constitution contain effective human rights guarantees consistent with international standards, including:

- guarantees for freedom of expression, opinion, religion, conscience, assembly and association;
- the right to a fair, prompt and public trial before an independent and impartial court;
- a clear statement that torture or other cruel, inhuman or degrading treatment or punishment will not be tolerated;
- a positive affirmation guaranteeing the right to life and declaring that the death penalty will never be allowed;
- a provision binding security and custodial personnel to respect prisoners' rights in accordance with international standards;
- guarantees for the independence of the judiciary and court powers to ensure restitution of violations of constitutional rights and compensation to victims;

- a mechanism to monitor human rights and to help to prevent human rights violations, such as an Ombudsman, with adequate powers consistent with international standards;
- a provision for international human rights treaties to which Malawi is, or becomes, a party to be fully incorporated into national law.

The introduction of human rights guarantees into the Malawi Constitution is essential as the first step to ensure that these rights will be upheld and that there will be no recurrence of the widespread human rights violations of the past. Human rights guarantees in the Constitution will provide the framework for the institutionalization of human rights safeguards in law and practice, but on their own they are not enough. A genuine and public commitment from the highest officials to uphold these guarantees is required. Amnesty International will continue to monitor human rights in Malawi and take action in response to any human rights abuses by future governments which fall within its mandate.

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