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MALAWI

Government releases many political prisoners Jack Mapanje and others still held

Africa Watch welcomes the release of 87 political prisoners in Malawi, including some 25 held under presidential detention orders. The releases represent a significant step by the government towards complying with Malawi's legal obligations under the African Charter on Human and Peoples' Rights, which it ratified a year ago. However, in other respects Malawi's performance still falls far short of the standards required by the Charter. In particular Africa Watch remains concerned about the fate of about 19 prisoners still detained without charge at Mikuyu prison, who include the internationally-renowned poet Jack Mapanje.

The release of political prisoners began at the beginning of January, when George Mtafu, Margaret Marango Banda, Blaise Machila and William Masiku were set free:

George Mtafu, who had been held without charge at Chichiri Prison, is Malawi's only neurosurgeon. He was arrested in February 1989 because he had criticized discrimination against civil servants who originated from Malawi's northern region, in particular the forcible redeployment of school teachers to their district of origin.

Margaret Marango Banda, a former announcer with the Malawi Broadcasting Corporation, was an official of the *Chitukuko Cha Amai mu Malawi* (CCAM), the national women's organization. She is believed to have criticized corruption in the CCAM, which is headed by Cecilia Tamanda Kadzamira, the country's "Official Hostess." She was arrested in July 1988 and held without charge at Zomba Prison.

Blaise Machila used to be a lecturer in English at Chancellor College in the University of Malawi. He was arrested in January 1988 for denouncing the imprisonment of his university colleague Jack Mapanje. A schizophrenic, he had made his criticisms while an in-patient at a mental hospital. He was held without charge at Mikuyu Prison, often chained and naked.

William Masiku was executive chairman of ADMARC, the agricultural marketing agency, at the time of his arrest in 1987. The precise reason for his imprisonment is not known, but may be connected with criticism of Life-President Hastings Kamuzu Banda's business practices. In the past Banda has benefitted from large unsecured loans from ADMARC.

These four appear to have been released unconditionally - Mtafu has even been allowed to return to his post at Queen Elizabeth's Hospital, Blantyre.

Since January a further 83 prisoners are reported to have been released. They are believed to have included Thozza Konje, a sugar company manager who, like George Mtafu, had criticized the redeployment of teachers in 1989. A number of other northerners arrested in the 1989 crackdown were among those released, including Mackson Nyirenda, Peter Mkandawire, Luck Mughogho, Davie Mumba, Prince Musuku, Bright Nyasula and Boston Phiri.

Also among those released were the following:

Brown Mpinganjira, the government's deputy chief of information, who had been detained since 1986 for providing information to foreign journalists. He was detained at Mikuyu.

Ian Felix Mbale, aged in his 20s, who was arrested at the border town of Mchinji on January 12, 1981 on his return from Zambia where he had spent Christmas. He was a trainee manager at the Shire Clothing Company in Lilongwe and comes from Chitipa in Northern Region. It was apparently alleged that Mbale had been in contact with exile groups based in Zambia. He was held in solitary confinement in leg irons at Maula Prison in Lilongwe and given electric shock torture at the national police headquarters, before being transferred to D Section at Mikuyu.

Ishmael Mazunda, a member of staff at the Malamulo Seventh Day Adventist Hospital, who was arrested and detained at Blantyre Prison in November 1989. As secretary of the hospital's disciplinary committee he was responsible for expelling a number of students for stealing drugs. One was apparently related to a senior official in the Ministry of Health. The expelled students are alleged to have told the government that Mazunda had made disrespectful references to President Banda in the course of a lecture on the human reproductive system. Mazunda apparently remarked that while an old woman was incapable of bearing children, an old man could still father them. The expelled students claim that he said "*the old man*" - that is, President Banda.

Owen Ndovi, a Malawian who lives in Zimbabwe, who was arrested in 1984 on a visit to the country. He was detained at Mikuyu.

Notable among those who have not so far been released is Jack Mapanje, Malawi's foremost poet and head of the English Department at Chancellor College in the University of Malawi. He

has been detained without charge or explanation since September 1987, possibly because the government feared the impact of a forthcoming volume of his poetry entitled *Out of Bounds*. For the first 20 months or so of his incarceration Mapanje was not allowed family visits, nor was he allowed to see a priest for more than two years - he is a practicing Roman Catholic. In February 1991 his mother died, but he was not allowed to attend her funeral. Africa Watch understands that Mapanje's case is currently under consideration by the Malawian authorities and urges that he be released immediately and unconditionally.

Malawi's longest serving political prisoner is also apparently still detained. Martin Machipisa Munthali was arrested in 1965 for his alleged role in armed opposition to the government. According to some accounts he was then tried on a charge of illegal possession of arms and sentenced to between seven and nine years' imprisonment. Whether or not this is true, he was certainly not released when his sentence had expired and was issued with a presidential detention order under the Public Security Regulations. He is held in A Section at Mikuyu Prison.

Another cause for concern is the case of Goodluck Mhango, who has been detained without charge since October 1987. An apolitical veterinary surgeon, he was arrested after the publication of an article by his brother Mkwapatira Mhango, an exiled journalist. Mkwapatira's article was about alleged corruption and abuse of power in the CCAM. Goodluck was severely beaten after his arrest, causing damage to his ear. He was detained without charge at Dzeleka Prison. In October 1989 Mkwapatira was murdered in a firebomb attack on his home in the Zambian capital, Lusaka. His wives and a number of his children also died. Three weeks before the attack, President Banda had singled out "the Mhango family" for denunciation in a speech. Goodluck Mhango's name was forwarded to the Inspector General of Police in early 1991 with a recommendation that he be released. However, the recommendation was overruled, apparently by John Tembo, uncle of Cecilia Kadzamira and the man responsible for the day-to-day government of Malawi. Goodluck Mhango is now held at Mikuyu Prison.

Only one other recommendation for release is known to have been overruled in this manner: the sister of Fred Sikwese, who died in detention in Lilongwe Prison in March 1989. Sikwese was the Principal Protocol Administrator at the Ministry of Foreign Affairs. He was arrested in February 1989, apparently because he was suspected of leaking sensitive information about Malawi's close diplomatic relations with South Africa. The circumstances of his death, so soon after being arrested, have never been explained. Africa Watch has no further details about the imprisonment of Ms Sikwese, except that it is apparently related to her brother's case.

The apparent reason for the release of prisoners is that Malawi has come under increasing international pressure over its human rights record in recent months. The German Government has informed the Malawian authorities that it will be cutting its development aid by half because of human rights considerations. Germany was particularly concerned about the case of the neurosurgeon George Mtafu, who was German-trained. In late 1989 President Banda snubbed a German parliamentary delegation which tried to raise his case on a visit to Malawi. The European

Community (EC) is the second largest multilateral donor to Malawi (after the World Bank). Various EC institutions have raised human rights concerns over a period of some years. In March 1990 a motion was tabled at the Joint Assembly of the European Parliament and the African, Caribbean and Pacific (ACP) group of countries, deploring the detention of political prisoners, among other abuses of human rights. The secretariat of the Joint Assembly has continued to pursue the matter with the Malawian Government. The Danish Government, which funds projects in Malawi in irrigation and telecommunications has let it be known that because of human rights considerations these projects may be discontinued when they come up for renewal in the near future. Both the United Kingdom and United States governments have privately raised human rights concerns. The initial releases of George Mtafu, Margaret Banda, Blaise Machila and William Masiku in January came just before a visit to Malawi by US Secretary for Health Louis Sullivan and Ronald Roskins, head of the Agency for International Development (USAID).

Malawi and the African Charter on Human and Peoples' Rights

In February 1990 Malawi ratified the African Charter on Human and Peoples' Rights, a human rights instrument drawn up by the Organization of African Unity (OAU). The release of political prisoners represents an important step towards bringing Malawi's actual human rights performance in line with its international obligations. However, aside from the continued detention of alleged critics such as Jack Mapanje and Goodluck Mhango, Malawi's respect for human rights in practice falls short of the Charter's requirements in many respects.

ARTICLE 2: Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion...

Discrimination against racial and religious minorities - citizens of Asian origin and the Jehovah's Witnesses church - is enshrined in law. Ethnic discrimination against people of northern origin is reflected in quotas in the education system and in job discrimination. Membership of the single political party is the precondition for advancement in the public service. Ordinary Malawians are often required to produce party cards before they are allowed to board a bus or enter a market.

ARTICLE 4: Every human being shall be entitled to respect for his life and the integrity of his person.

A number of Malawians have died as a result of political killings or deliberate ill-treatment in custody. The cases of Mkwapatira Mhango and Fred Sikwese have been mentioned above. None of these deaths has ever been investigated.

ARTICLE 5: All forms of exploitation and degradation of man particularly slavery,

slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Former political detainees report torture, usually in the form of beatings, in Malawi's prisons and police stations. Persistent criminal offenders are subjected to the "hard-core program" - a form of cruel, inhuman and degrading punishment in which they are chained naked and denied food.

ARTICLE 6: ...no one may be arbitrarily arrested or detained.

Arbitrary arrest and detention is systematic, although the recent releases are a welcome attempt to curb the worst excesses. In addition to release of all detainees, in Africa Watch's view compliance with the requirements of the African Charter would mean repeal of the 1965 Public Security Regulations which allow indefinite detention without charge. Under these regulations political detainees are allowed no review of the reasons for their imprisonment and cannot challenge their detention before a court of law.

ARTICLE 7(1): Every individual shall have the right to have his cause heard. This comprises:

- a) The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;**
- b) the right to be presumed innocent until proved guilty by a competent court or tribunal;**
- c) the right to defence, including the right to be defended by counsel of his choice;**
- d) the right to be tried within a reasonable time by an impartial court or tribunal.**

Malawi has no justiciable Bill of Rights, so there is no possibility of appeal against violation of fundamental rights. Nor is there any impartial investigatory body, such as an Ombudsman or human rights commission, which could hear citizens' complaints that their rights had been violated.

Most important criminal cases - including all those with any political ramifications - are heard by so-called "traditional courts." In these courts there is no right to defence counsel. On occasion, even the right to call defence witnesses may be at the court's discretion.

"Traditional court" judges are appointed by and answerable to President Banda, who generally makes clear the verdict that he expects in any important case. The failure to presume a

person innocent or to allow defence counsel is compounded by brazen manipulation of court procedure and rules of evidence in favor of the prosecution. In one important political case, the doctrine guiding the admission of evidence in "traditional courts" was stated as "There is no smoke without fire." In other words, the fact of a person being charged presupposes his or her guilt.

Orton Chirwa, leader of the opposition Malawi Freedom Movement (MAFREMO), and his wife Vera Chirwa have been imprisoned in Malawi since 1981. In 1983 they were sentenced to death for treason after a traditional court trial in which they were denied defence counsel and the right to call witnesses and the rules of evidence were disregarded, for an alleged offence which is supposed to have taken place outside the territorial jurisdiction of the court. Their appeal to the National Traditional Court of Appeal was rejected, but their sentence was commuted to life imprisonment after widespread international concern about their case. They remain in poor conditions at Zomba prison. They should be released along with the political detainees.

ARTICLE 7(2): Punishment is personal and can be imposed only on the offender.

Goodluck Mhango's detention, as a punishment for an article written by his brother, is a violation of this principle.

ARTICLE 8: Freedom of conscience, the profession and free practice of religion shall be guaranteed.

The Jehovah's Witnesses are banned. Over the past 24 years, thousands of their members have been killed, imprisoned or exiled.

ARTICLE 9: 1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

The free flow of information is impeded by tight official controls on the press and a lengthy list of banned books. Jack Mapanje remains imprisoned for attempting to exercise the rights guaranteed in this article. In past years a number of journalists have been detained, as well as officials such as Brown Mpinganjira and Fred Sikwese and intellectuals like Blaise Machila, whose cases have been described above. In February 1990, the very month when Malawi ratified the Charter, it also expelled the only two resident foreign correspondents.

Under the Public Security Regulations, it is an offence, punishable by up to five years' imprisonment, to publish anything likely to "undermine the authority of, or public confidence in the government." A 1973 amendment to the Criminal Procedure and Evidence Code creates an offence of "Communication of false statements, etc, which may be published generally outside Malawi."

ARTICLE 10: 1. Every individual shall have the right to free association provided that he abides by the law.

2. Subject to the obligation of solidarity... no one may be compelled to join an association.

Malawi is a *de jure* one-party state, precluding the right to free association. Under Sections 64-67 of the Penal Code there are a number of offenses to do with membership of an "unlawful society" - defined as one formed for the purpose of "subverting or promoting the subversion of the Government or any officer thereof." Contrary to the principle of the presumption of innocence, enshrined in Article 7(1)b of the Charter, anyone who attends a meeting of an unlawful society is presumed to be a member unless he or she can prove otherwise.

As already described, individual Malawians are constantly compelled to join the ruling party, or to make compulsory financial contributions, regardless of their personal beliefs.

ARTICLE 11: Every individual shall have the right to assemble freely with others.

In practice anybody attempting to exercise this right could fall foul of the provision outlawing attendance at a meeting of an "unlawful society."

ARTICLE 12: 1. Every individual shall have the right to freedom of movement and residence with the borders of a State provided he abides by the law.

This right is denied to Malawians of Asian origin, who are only allowed to reside within urban areas.

ARTICLE 13: 1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

All candidates for Parliament must be members of the ruling party and are individually chosen by President Banda.

2. Every citizen shall have the right to equal access to the public service of his country.

Civil servants of northern origin have been fired from their jobs and northerners in the education system have been forced to return to the Northern Region, often with loss of jobs or superiority.

Clearly, this is no more than an outline of Malawi's failure to comply with its international human rights obligations. A fuller account is to be found in the Africa Watch report *Where Silence*

Rules: The Suppression of Dissent in Malawi. Under the African Charter on Human and Peoples' Rights a commission has been formed to monitor the adherence of states to the provisions of the Charter. This commission can consider submissions from other states, non-governmental organizations and concerned individuals. Africa Watch has submitted its report to the African Commission on Human and Peoples' Rights for its formal consideration.

Recommendations

Africa Watch calls upon the Malawian Government to take the following measures which are the minimum required to bring the legal framework for the protection of human rights in Malawi in line with its international obligations:

- * release of all remaining political detainees.
- * release of Orton and Vera Chirwa and review by the High Court of all other cases of prisoners serving sentences imposed by the "traditional courts."
- * amendment of the Traditional Courts Act to restrict the jurisdiction of these courts to civil disputes and petty criminal matters.
- * repeal of the Public Security Regulations and of those sections of the Criminal Procedure and Evidence Code and Penal Code restricting freedom of expression and freedom of association. Repeal of all laws and regulations restricting right to employment or freedom of movement on the grounds of racial or ethnic origin.
- * amendment of the Constitution to permit the formation of political parties other than the ruling Malawi Congress Party.
- * incorporation of the provisions of the African Charter on Human and Peoples' Rights into a justiciable Bill of Rights and the repeal or amendment of all other legislation found incompatible with the rights guaranteed in the Charter.

Africa Watch calls upon Malawi's international partners and donor governments to make future assistance to Malawi conditional upon it taking these specific measures to protect human rights.

Readers may write politely worded letters to the Malawian Government authorities listed below, calling for the immediate and unconditional release of **Jack Mapanje, Machipisa Munthali, Goodluck Mhango, Ms Sikwese, Orton Chirwa and Vera Chirwa**, as well as the rest of the 19 prisoners with detention orders still believed to be held at Mikuyu Prison.

You may also wish to write welcoming Malawi's ratification of the African Charter on

Human and Peoples' Rights, but suggesting a number of specific ways in which Malawi's actual human rights practice might be brought into line with its legal obligations under the Charter.

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Africa Watch is a non-governmental organization created in May 1988 to monitor human rights practices in Africa and to promote respect for internationally recognized standards. Its Chairman is William Carmichael and Alice Brown is Vice-Chair. Its Executive Director is Rakiya Omaar; its Associate Director is Alex de Waal; Richard Carver is Research Consultant; Janet Fleischman and Karen Sorensen are Research Associates, and Ben Penglase and Jo Graham are Associates.

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