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African Commission  
on Human  
& Peoples' Rights



Commission Africaine  
des Droits de l'Homme  
et des Peuples

## **PRISONS IN MALAWI**

REPORT ON A VISIT  
17 TO 28 JUNE 2001

BY

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CONDITIONS OF DETENTION IN AFRICA

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# PRISONS IN MALAWI

## INTRODUCTION

### *Dates of the visit and composition of the delegation*

Commissioner Dr Vera Mlangazuwa Chirwa, Special Rapporteur on Prisons and Conditions of Detention in Africa (a mechanism of the African Commission on Human and Peoples' Rights) visited places of detention in Malawi on 17-28 June 2001.

The objective of the visit was to assess and document the conditions of detention in Malawi, make immediate recommendations when necessary and initiate co-operation with the Government of Malawi towards the improvement of prison conditions in the country.

The Special Rapporteur was accompanied by:

- Dr. Alpha Oumar Sankarela Diallo, Physician in chief, Security and Prison Services, Guinea
- Audrey Pascaud, Assistant, France

The ACHPR wishes to thank them for their contribution to this visit.

### *Places visited*

The delegation visited the following prisons and detention centres

1. Chichiri prison
2. Mulanje prison
3. Mpyupyu prison farm
4. Chilwa approved school
5. Mikuyu prison
6. Zomba central prison (complex for remand, convicts, women, juveniles) and maximum security prison
7. Mangochi prison
8. Mangochi police cells
9. Lilongwe police cells
10. Maula central prison (complex for remand, convicts, women, juveniles)
11. Kachere Lilongwe remand prison

- 12. Kasungu prison
- 13. Mzimba prison
- 14. Nkhata Bay prison
- 15. Mzuzu prison

The 13 prisons visited represent 6,291 prisoners, that is 81% of the total prison population in Malawi.

### ***Consultations undertaken by the delegation***

#### ***Authorities***

- His Excellency the State President, Dr. Bakili Muluzi
- Chairman of the Inspectorate of Prisons, Justice D. Tambala
- Mr W. Manyera, Chief Commissioner of Prisons
- Regional Commissioners of prisons

#### ***NGOs***

As regards non-governmental organisations, the delegation met representatives of the Malawi Human Rights Resource Centre, the Centre for Human Rights and Rehabilitation, Penal Reform International, Malawi Carer, Women's voice, Interparty Peace and Unity.

#### ***Media***

The Special Rapporteur also met and had interviews with representatives from *The Nation* publications, *Misa - Malawi*, *MDS*, *the Daily Times*, *TV Malawi*.

#### ***Prisoners***

In addition, a number of prisoners were interviewed in private, individually or in groups in each prison and police station visited.

### ***Co-operation received during the visit***

Fruitful discussions were held with Justice D. Tambala, Chairman of the Inspectorate of Prisons and Mr W. Manyera, Chief Commissioner of Prisons and regional commissioners of prisons.

However, the Special Rapporteur regrets that no Minister had time to receive the delegation since they were attending budget session.

The Special Rapporteur is particularly grateful to His Excellency the State President, Dr. Bakili Muluzi for the time he devoted to discussions with her and to the immediate actions he took.

The Special Rapporteur appreciates the very constructive way in which the State President took note of the observations made regarding the prisons and police stations of Malawi and subsequently reacted to them by deciding to go and visit Zomba prison himself. Most of the recommendations were immediately implemented and many items were donated to the prison to put right some of the problems such as blankets, soap, bread, wheat for nsima, sugar, plastic plates, buckets. Items to be used for repairing damaged walls and stairs were also donated. The President released 800 prisoners and promised to attend to other prisons as well.

The delegation had free access to the establishments of its choice and could visit all units and buildings without any difficulty. The delegation was received in a very satisfactory way by the officers in charge and by staff. There was a delay in gaining access to Kachere Lilongwe remand prison, however, this was due to the delegation arriving after the lock up of prisoners which had taken place early that day. The delegation could visit the prison the day after. The delegation was allowed to have private interviews with prisoners individually or in larger groups despite the tension that reigned sometimes during the visits and the hostility showed by prisoners who complained that there had been numerous visits by various delegations but they had no positive results so far (Maula, Zomba).

The Special Rapporteur and her delegation received considerable assistance from Malawi Carer. The effective action they took to help prepare the programme and to overcome the difficulties encountered by the delegation in the course of the visit should be stressed.

The Special Rapporteur would like also to thank paralegal officers of the Paralegal Advisory Service who accompanied her during some of her visits and

congratulate them for the important work they are doing, with professionalism and seriousness.

At the end of each visit, the Special Rapporteur made immediate observations on certain issues to the prison director or officer in charge. At the end of the visit to Malawi, the Special Rapporteur gave a summary oral and written account of its findings to the State President. The Special Rapporteur also reported directly to the Chief Commissioner of Prisons about some of the most urgent problems encountered. The findings of this mission are documented later in this report.

In conclusion, the Special Rapporteur welcomes the general spirit of co-operation which marked its delegation's visit to Malawi and the follow-up to the visit. The Special Rapporteur trusts that its recommendations will be taken note of in a constructive way by all the parties concerned, and that the substantial measures taken by the State President will not be a one-off intervention but will be extended to all the prisons of Malawi on a systematic basis for the purpose of improving conditions in Malawi prisons.

### *Context of the visit*

Prison authorities stated openly to the delegation that prisons were overcrowded and that they were not provided with adequate resources by Parliament although the budget had increased over the last years. The annual budget for prisons is 90 Million Kwacha (USD 1.2 million - MK65 = USD1). It is improving, yet, it is considered to be inadequate considering the growth of the prison population. The regional prison authorities stated that monthly cash budget for the Southern region was about 800,000 Kwacha, about 500,000 for the Central region and 600,000 for the Northern region. This partly explained the pathetic state in which most prisons were found and the difficult conditions for both prisoners and prison staff.

It should be mentioned that Malawi is the very country where the Special Rapporteur on Prisons and Conditions of Detention in Africa has spent 11 years in prison as a political prisoner during Dr. Banda's regime. After visiting Malawi prisons this year, the Special Rapporteur can confirm that prison conditions have deteriorated since she was released in 1993. This confirms a view that the Inspectorate of Prisons expressed and documented in its report dated May 2000.

## FINDINGS

### *Preliminary remarks*

#### *The prison system*

Police and prisons are under the authority of the Ministry of Home Affairs. There are 23 prisons in Malawi. There is one regional prison per region, district prisons, farm prisons and two reformatory schools (under the Ministry of Gender) respectively for juveniles beyond and under the age of 15. There are 7 prisons in the Central Region, 6 in the Southern region, 5 in the Eastern region and 5 in the Northern one.

Zomba central prison is designated a maximum security prison, the largest prison in Malawi. It receives prisoners sentenced to long and life sentences from all over the country and remand prisoners on serious cases including first offenders. It also receives prisoners sentenced to death, as is also the case in Chichiri prison. Lilongwe prisons (Maula and Kachere) also keep remand prisoners on homicide cases. Other prisons receive prisoners with short sentences (less than four years) or remand prisoners on less serious cases. District prisons send those sentenced to more than four years to regional prisons. From there, they are transferred to Zomba. However, it should be noted that this classification is not adhered to in practice. Prisoners are transferred from Kasungu to Maula central prison when their sentence is more than six years, from Mzimba and Nkhata Bay to Mzuzu when sentences are longer than 3 years. Some prisoners sentenced to more than four years were found in district prisons (8 years sentenced prisoners in Mangochi prison and 20 other persons with more than 2 years, another one with 10 years in Kachere prison) and regional prisons (a woman sentenced to 14 years at Mzuzu prison's women section). At Kachere remand prison, the delegation noticed that not only remand prisoners were kept but also a number of convicted who are there to perform tasks such as gardening and cleaning.

There are prison farms which provide food for the prison ration. One of them (Mpyupyu) operates as an open prison. They contain prisoners with good behaviour in the final stages of their sentence. The prison administration is expanding its farm project to improve prisons' self-sufficiency and allow more prisoners to work in farmlands.

Chilwa approved school is for juveniles under the age of 18. Mpemba Boys

Home is another establishment for juveniles under 15. The objective of these places is to rehabilitate them by providing them with vocational training and academic education, they also do gardening work.

The prison administration has also a fully equipped hospital ward at Zomba civil hospital (funded by the International Committee of the Red Cross) and a training facility for prison staff, the Mapanga Prison Training School.

The prison staff is composed of a Chief Commissioner of Prisons, regional prison commissioners, superintendents / officers in charge, deputies, social welfare officers, officers in charge of security, administrative staff and guards. Previously, they were trained by the police but new recruits are now trained at Mapanga. An assistant superintendent earns about 5,000 Kwacha per month. The delegation noticed that there were very few prison guards inside some prisons, e.g. 2 guards on duty at Zomba with more than 1,900 prisoners.

## *Conditions of detention*

### Prison population

The prison population has been increasing for many years. In August 1997, the prison population was 5,557, it rose to 7,728 during the year 2000. At the time of the visit, the prison population was 7,800. Observers say that the prison population will tend to go on rising in the future unless some measures are implemented systematically such as bail, community service, diversionary mechanisms etc. The increase of the prison population has many serious consequences for the conditions of detention, in particular overcrowding, which is a source of many other corollary problems (see paragraph on overcrowding). According to the estimations<sup>1</sup> calculated on the basis of the figures provided by the prison administration, the number of prisoners per 10,000 inhabitants is 10.8 in the Southern region, 5.3 in the Central region and 5.2 in the Northern region, 7.8 at national level.

The prison population is characterised by a rather lower level of remand prisoners in comparison with other African countries. In June 2001, around 35% of the prisoners, 50% of the juveniles and 65% of women prisoners were on remand.

1. The estimations are calculated on the basis that the 6,291 prisoners represent 81% of the total Malawi prison population, i.e. a total prison population of 7,767.

The remand population is composed of prisoners under temporary remand warrant pending police investigation's closure and of prisoners awaiting trial.

Overstaying on remand is a serious question, some prisoners were found to be awaiting trial for many years, at least one of them for almost 10 years at Mzuzu prison, some others for 4 to 10 years (Zomba, Kasungu, Maula, Mzuzu, Chilwa approved school), one juvenile for 5 years at Mzuzu prison.

The most common crime is simple theft, the most violent ones are murder, robbery, rape, house breaking, burglary.

All prisoners are granted a remission of one third of their sentence provided they behave well.

The death penalty is still mandatory for offences such as murder, however, there has been no execution since 26 September 1992 (Zomba Capital Cases Book). The official opposition to the use of capital punishment dates back to 1997 when President Muluzi commuted the death sentences into life imprisonment and pledged not to sign any order of execution. At the time of the visit, there were 60 prisoners on death row. 48 were held in Zomba central prison, 12 in Chichiri prison (transferred from Zomba for security reasons). At least 53 people were sentenced to death for murder in 2000. Since the visit, the State President commuted the sentences of all those on death row.

Malawi uses life imprisonment, Parliament is talking of reducing it to 12 or 20 years, however, it seems that most of the time, prisoners are granted pardon after around ten years depending on their behaviour.

Women represent less than 2% of the prison population, juveniles (up to 18 y. o.) around 4%. According to the Penal Code, juveniles should not be sentenced to more than two years imprisonment. However, sentencing practice seems to take little account of the age of the offender and sentences are generally harsh. Many juveniles were found to be sentenced to much more than two years. This was in particular the case of the majority of the juveniles detained at Zomba central prison, one of them was sentenced to 10 years and a half. There was also one juvenile sentenced to six years at Mangochi prison. Because the crime rate is increasing, magistrates tend to impose harsher sentences. This also applies to juveniles who are sometimes sentenced to long imprisonment for petty offences. One juvenile complained that he was sentenced to 4 years for stealing his uncle's goat (Maula). Another one sentenced to 3 years for fighting with his friend (Mangochi). Juveniles are also overstaying on remand, at least one of them for

5 years (Mzuzu), others for several months (Kachere).

There were at least 11 babies and young children detained with their mothers in Malawi prisons. The youngest prisoner met was 12 y.o. (Mzuzu), the eldest 72 y.o (Nkhata Bay).

It is also to be noted that most prisoners have a low level of education. At Mikuyu prison, less than 4% of the prisoners (all convicted) present the day of the visit had been to school. Less than 20% at Mangochi. The illiteracy rate is also the highest in the Southern region.

In essence, there is no legal aid currently. There are 7 lawyers for the whole country (10-11 millions population) and of these, three graduated recently from college. Only those facing capital cases (i.e. murder) are represented (meeting their lawyers minutes before their trial). The rest - however serious their offences - are unrepresented at trial unless they can pay a lawyer. But there are no wealthy people in Malawi prisons.

#### Buildings, housing and separation

##### *Premises*

The delegation visited 13 out of the 23 prisons. All of them were found to be in a miserable state, with buildings dating back to the first quarter of the 20th century, poorly or never maintained. The size of the prisons varies a lot, from large complexes like Zomba and Chichiri accommodating hundreds of prisoners to small prisons like Mzimba.

Most prisons are built with concrete and bricks, roofs with iron sheets. However, Maula women section is completely made out of iron sheets which is really inconvenient during both summer, when prisoners suffer from the heat and winter when they freeze.

In many prisons, the roof is made of simple iron sheets, with no safe ceiling. They are often easy to break due to the low height of the buildings (Nkhata Bay) or are rotten and leaking (Zomba long term and life prisoners' section). In Kasungu, the ceiling is replaced by a network of barbed wire. The ceiling is being repaired in one of the cells of Nkhata Bay prison after the escape of 4 prisoners in 2000. In that prison, the capacity is 100 but due to this work in progress, one cell is not used and the number of prisoners is 56. In Kachere Lilongwe remand prison, at least 4 cells out of 12 are not used due to defective ceilings and roofs, the remaining are in bad condition. At Mikuyu prison, water is leaking from the

roof in all cells and in the kitchen. At Mzuzu juveniles section, one of the cells is not used due to a broken hinge, consequently prisoners are packed in one small cell with less than one square meter each. Moreover, they are theoretically separated from adults but the fence is on a poor shape and separation not really effective.

In some prisons, the combination of terrible conditions and overcrowding creates a hazard to life. In Zomba prison for instance, the capacity is 800, however, the day of the visit there were 1,912 prisoners. The units accommodating long term prisoners (block B) and convicts/remand prisoners (block A) are not suitable for the safe detention of so many persons at the same time. According to the figures provided by the administration and the prisoners themselves, block B accommodates several hundreds of prisoners. Only one stair leads into the first floor where hundreds of prisoners are sleeping. On this first floor, narrow balconies (1 m large maximum) lead into in the cells. The only exit is through the only gate of the building on the ground floor. Many of the prisoners may not be able to reach the exit in case of emergency. In block A, which is the same type of building with less prisoners, the stair is decaying, some of the stairs' steps are missing, leaving large holes where prisoners could easily fall down. This is a worrying situation, even more when considering that prisoners may have to rush out in case of emergency. Moreover, the roofs of these two buildings did not look waterproof, the walls showed traces of dampness and there were stagnant pools of water on the floor.

Zomba first offenders' section and block B (long term prisoners) are very densely populated, with 1 sq. m. per prisoner on average. 1 sq. m. is also the average for Maula and Mzimba prisons. The situation is even worse in Chichiri and Mzuzu prisons where there is respectively, on average, 0.5 sq. m. and 0.8 sq. m. per prisoner in cell.

The situation of juveniles in term of space is the worst. In Chichiri for instance, juveniles have 0.3 sq. m. per person, 0.9 in Maula.

At Lilongwe police station, there were at least 15 persons detained in a small cell (3.5 m by 2m.) the day of the visit.

The following figures were obtained by systematically measuring the size and the population of all the cells of all the 13 prisons visited by the delegation. It should be reminded that the 13 prisons visited represent 6,291 prisoners, that is 81% of the total prison population in Malawi.

Among the 6,291 prisoners concerned, percentage of prisoners having in cell:

1 sq. meter or less	49.4%
2 sq. meters or less	88.4%
more than 2 sq. meters	11.6%

Overcrowding and the lack of space are factors explaining why basic separations between remand and convicted prisoners, young and adults, healthy and sick or contagious prisoners are far from being implemented. In most prisons such as Maula, Chichiri, Nkhata Bay, Mzuzu, Kachere, adults and juveniles are segregated during the night only. In other prisons, they are mixed with adults days and nights (Mangochi). In Zomba, long term prisoners and convicted prisoners can mix with first offenders as the yards communicate and gates are not closed during the day. Convicted and remand offenders are often mixed in the same cells or can mix during the day. The only separation enforced is for the detention of women and condemned prisoners. Zomba is the only prison where juveniles are theoretically strictly separated from adults, that is even during the day. In Maula and Kachere, they are locked in a separate dormitory during the night but mix with adults during the day. It should be noted that some juveniles complained that they could be transferred to the adult units as a punishment or to be abused sexually by adults.

The authorities should pay particular attention to the risk of spread of diseases which is really increased with promiscuity (see paragraph on health matters) and to the conditions of the most vulnerable categories of prisoners such as young people (see also paragraph on juveniles and abuse/violence).

It should be mentioned that the government allocated 1.26 million Kwacha for the building of a new prison at Mzimba and the rehabilitation of Zomba prison (toilets) while the Inspectorate of Prisons has recommended to shut it down and build a new one. The prison administration plan to have a new prison at Mwanza as well at some time.

It should be noted that the state of the buildings and the lack of good security conditions (no light during the night, lack of staff) can partly explain the number of escapes reported by the prison administration. There were for instance 8 in Zomba since January 2001.

### *Electricity*

The lack of electricity is a problem in most of the prisons visited. The delegation noticed that there was no electricity at least in Zomba first offenders' section, in Nkhata Bay prison and in Kachere prison. When electricity was reported to be installed, it was difficult to ascertain whether bulbs were working and light switched on at night. Due to winter time, the delegation could witness the difficult conditions of detention and work in prisons due to the lack of proper electrical equipment and lighting. During winter time, sun goes down around 6.00 p.m. Prisoners are locked up around 4.00 p.m. until around 7.00 a.m. the next day. This means that prisoners spend more than 60% of their time in the darkness during winter (March to August), this also means that prison guards in charge of security work in difficult conditions as most parts of the prison are completely dark after the lock up.

### *Cells*

Prisoners are accommodated in dormitories or smaller cells with 3 to 4 people. Space is most of the time not enough to lay down properly.

Overcrowding is such that in some places prisoners complained that when they are locked up, ventilation is not enough (Mzimba prison, Zomba prison's long term and life prisoners' section, Zomba first offenders' section, Kasungu). Cells at Zomba's central prison's section for condemned prisoners lack proper ventilation, the only air enters through a small grill above the door.

At Maula, up to 135 prisoners are detained in a dormitory meant for 50 persons. At Chichiri, juveniles are packed in cells with only 0.3 sq. m. each. Many of them will have to serve long sentences in these conditions. At Mzuzu, juveniles have only 0.7 sq. m. each. At Lilongwe police station, two of the three cells (3.5 m x 2 m) had about 15 persons each.

Prisoners at Mzimba have only 0.7 sq. m. each. They demonstrated how they were organised in cell for sleeping, they would not lay down but sit back in row with the legs bowed, the next one sitting in the same position between the legs of the one behind, etc. At Zomba, they explained that they were all sleeping on their side, packed one next to the other. When one was tired, they would all change to the other side.

There is no overcrowding at Chilwa approved school (this is apparently due to the school being under-funded and so, like Mpemba, it operates at 50% of its capacity) and at Mulanje prison where the prison officer in charge refuses to receive persons still under police investigation.

### *Kitchen*

Kitchen facilities are basic, dirty and unsatisfactory considering the large number of prisoners. Equipment is defective and energy wasting. Cooking pots are worn out. The organisation adopted impacts on the number and quality of meals served. Zomba prison has only one kitchen and all cooking pots are worn out at Maula except one.

### *Water, sanitation, bathing and toilet facilities*

The sewerage system is in bad state, this is because of the lack of maintenance and the high numbers of prisoners. The situation is certainly even worse during the rainy season.

Running/tap water is present in all prisons, however, there was no water in Mangochi prison the day of the visit, this was reported to be the first time in four months. Suspects do not have access to water at police stations (Lilongwe). It was also found that in Kasungu, Mzimba and Zomba prisons, taps were defective and leaking. At Maula central prison and the women's section, the pressure is very low and water not enough. Moreover, the number of taps is limited to one per yard which is not enough again considering the number of prisoners. A lot of water is wasted, this is quite unacceptable. The prison administration states that it does not have adequate funds and that prisons are sometimes disconnected from water for unpaid bills (Nkhata Bay). Taps should be repaired and prisoners educated so that they use them properly and do not leave them open when they do not need water. In Maula central prison and women section, the water pressure is very low. This is a problematic situation considering the very big population.

Toilets and shower cubicles are not sufficient considering the number of prisoners (Zomba, Maula, Chichiri, Mzimba). Moreover they are terrible (flush is not working except in a few places such as Mzuzu and women sections) and nauseating in most prisons visited. In police cells visited, a strong smell of urine tells about the lack of access to toilets. At Kasungu, a cell near the toilets can not be used due to the inconvenience cause by the defective toilets. Zomba condemned section does not have any toilet. Prisoners use buckets that are emptied in the toilets of other sections. The security section at Maula prison does not have any bathing facility. There are two toilets and five buckets at Mzimba prison. It should be noted that the situation is better in women sections, which is certainly due to the absence of overcrowding in these sections.

In some of the prisons, there are toilets both inside and outside cells (Maula

central prison and women section, Mzuzu) or an isolated corner in the cell where a bucket is put at night (Nkhata Bay, Mzuzu). Most toilets do not have working flush or running water except in Mzuzu prison and women sections.

In most prisons, rotten and saturated pipes lead to infiltration of human stools from toilets to shower cubicles through the water draining system. This was particularly the case in Maula prison (remand and convicted sections). Consequently, shower cubicles were most of the time very dirty and not used by the prisoners. They would rather use buckets to carry water and shower in the yard. As a result, yards were often very dirty, with standing pools of dirty water (creating a health hazard). At police stations, prisoners were unable to wash themselves.

This situation was a source of bitter dissatisfaction and acute tension among prisoners, who complained of being treated like animals.

In most prisons, prisoners do not have access to toilets during the night. They have to use buckets or plastic bags. There is most of the time only one or two buckets per cell that they are also using to carry water for shower during the day.

This, combined with the lack of hygiene (see paragraph on hygiene and clothing) explains the dirtiness and bad smells in most prisons. However, in Mzuzu prison, despite overcrowding, the toilets and shower cubicles were clean as was the yard where a draining system helps to get rid of water.

### *Dining hall*

There is no dining hall in Malawi prisons. Prisoners have their meals in cells or outside.

### *Outdoor facilities*

In most prisons exercise yards are the only place where prisoners can exercise. However, considering the number of prisoners, even large yards are hardly enough for exercising properly (Mzimba, Kachere).

In Zomba, there is a football ground. There are also small vegetable gardens as observed in Maula and Mangochi prisons.

The yards in most prisons are covered by soil and no more levelled as the concrete or pavements are worn out and/or have been removed to allow small gardens. In Zomba first offenders' section, Maula prison and Nkhata Bay, erosion is accelerating the process, leading to a somewhat chaotic environment, with

muddy and slippery slopes and pits as the water draining system is not adequate. This situation must be worse during the rainy season. In Nkhata Bay, the rains have eroded the soil of the yard and the buildings' foundations are affected.

#### *Religious facilities*

There were no purpose built buildings for religious practice in the prisons visited by the delegation.

#### *Workshops*

In the past, workshops used to produce mats and other items for prisons. In Mzuzu, the delegation visited a carpentry workshop.

#### *Visiting room*

There is a visiting room at Zomba and Chichiri prisons. Prisoners from Chichiri complained that the visiting room was very noisy. In other places visited, there was no purpose built room. Visits take place in an office or a shed next to the gate (Mangochi, Kasungu) or next to the administration buildings (Mzuzu) or outside the prison, near the main gate, under the supervision of guards (Mzimba).

#### *Library*

The delegation saw only one small library, in Mzuzu. It also serves as a health centre.

#### *Disciplinary cell*

There are no disciplinary cells in Malawi prisons.

#### *Health facilities*

There are about seven medical assistants and five dispensaries. Most of the time, they are not up to standards and rather unsuitable for adequate health care and storage of medicines (Zomba, Maula prisons). Moreover, they are not big enough considering the number of prisoners (Maula, Mzuzu, Kasungu prisons). This state of affairs is partly due to the fact that the prisons themselves are antiquated. Many prisons do not have any purpose built dispensary (see also paragraph on health matters) and small cells are used instead (Mzuzu prison). In many other places, there is no health facility and prisoners are transferred to the nearest hospital (Kachere prison, Nkhata Bay prison, Mzimba prison, Mangochi prison).

The prison administration plans to open 8 more dispensaries and to intensify the use of Zomba hospital prisoners ward.

#### Clothing, hygiene

The lack of discipline in the field of cleanliness, overcrowding and the material conditions combined, explain the very unhygienic situation in Malawi prisons.

The prison administration provides one uniform to convicted/condemned prisoners. However, most of them are worn out. Some prisons like Zomba or Nkhata Bay used to have sewing machines to repair them and make new ones, but they are out of order now. In some prisons like Mzuzu, very few prisoners, those who have spent the longest in the prison, have uniforms. Women prisoners have often two uniforms each. This is because the women population is small and most of them do not stay long.

The delegation noted that prisoners lack clothing, especially when they work but also to cover them from the cold weather from April to August. Almost all of them go with bare feet although some prisoners have slaps (Zomba, Kasungu). Prisoners can not change clothing as they have only one pair even when they work or when they are sick. In Zomba and Nkhata Bay prisons, some prisoners are going almost naked and in other places many wear rags. Women complained that they did not have sanitary pads.

There were no cleaning tools, nor disinfectant used in the prisons visited. The floors were most of the time not even swept. The water containers available are used for other incompatible purposes at the same time (shower, toilets, cloth washing) because there are not enough (all prisons). At Mzimba, there are 5 buckets for 120 prisoners. Moreover, some of them are plastic and fragile. Tin containers are often old and leaking and prisoners have nothing to repair them<sup>2</sup>.

The provision of soap is poor. According to the Prison Act, prisoners should get soap twice a month but this is not the case. This was one of the most frequent complaints aired by the prisoners met in private or during the tour of the prisons. Prisoners also complained at Zomba that the soap and cosmetics provided by their families were confiscated by the officers. Prisoners have spent up to 5 months without receiving any soap from the prison administration at Mzuzu prison, 4 months at Mulanje prison. In Maula, they reported that the only soap they received was from outside, never from the prison administration. In Kasungu, prisoners complained that they had not received any since the year 2000. In Mzimba, prisoners received soap twice in June 2001. They did not receive any from January to March 2001 but there was no shortage in 2000 when they received soap every month.

2. They sometimes use maize to repair the holes.

The general condition is that many prisoners, even those who are working in the fields often wash themselves and their clothing without soap for months when they can not get it from their relatives. It was also observed that many prisoners have long and dirty hair. This is the main factor for the generalised presence of scabies and lice observed in all prisons.

The Special Rapporteur and her delegation observed a direct relationship between the lack of soap and the spreading of scabies. There was soap at Mzimba and no scabies while there were spreading scabies in prisons without regular provision of soap (Zomba, Maula).

On top of that, water is a problem in some places. At Mangochi, water was cut off. Consequently, prisoners and the prison were dirty.

The Special Rapporteur noticed that prisoners were unruly, notably as far as maintaining cleanliness was concerned and that prisons were therefore extremely dirty<sup>3</sup>. This was all the more surprising because normally prison administrations ensure that at least prisons are cleaned before receiving visits. This was generally not the case in Malawi, although there are so many prisoners who could get involved in cleaning activities, including remand prisoners, as cleaning should not be considered as work but as a duty of the prisoner. It is a prisoner's responsibility to keep himself and the place clean apart from lack of soap and cleaning materials.

However, Mzuzu prison and all women sections visited were extremely clean. The delegation commends the situation found in Mzuzu and women sections and encourages prisoners and prison officers there to make all efforts possible to keep the prisons as clean as they were the day of the visit. Signs showed that they were always kept clean and not for the sake of this visit only.

When addressing the prisoners, the Special Rapporteur urged them and stressed that it was very important for them to observe the rules of hygiene, that they should keep themselves, the kitchen, toilets, bathrooms cells and yards clean. This was important for their health. The Special Rapporteur also urged prison officers in charge to provide the prisoners with soap and other materials for cleaning.

The delegation recommends that to maintain personal dignity inside prisons, prisoners should be educated. Soap, tools and disinfectants should be provided. Water provision should be improved. The organisation among prisoners should

3. Except in Mzimba where they were in the contrary very disciplined. However, despite discipline, the prison was not clean.

be revised and improved to ensure that hygiene and general cleanliness improve rapidly. This would be also a way of preventing the spread of diseases and uncleanness and the outbreak of any epidemics which are a real threat with such overcrowding.

#### Bedding

In most prisons' and police cells, prisoners and suspects have neither mattresses<sup>4</sup> nor beds. They sleep on the floor. The prison administration should provide each new prisoner with two blankets at least (as per prison regulations). However, the prison administration is unable to fulfil this obligation and the police do not provide anything, except for women who most of the time have at least one blanket (Maula prison) or more (other prisons, Lilongwe police station). Condemned prisoners at Zomba have one blanket each. Many prisoners do not have any mat or blanket. They sometimes use bags, they sleep on the bare floor when their families can not provide them with anything, which is the most frequent situation. Those prisoners who are detained for long sentences most of the time have at least one blanket. However the prevailing situation at the time of the visit was that when blankets were available, they were often in rags, and in some cases, even long term prisoners did not have blankets (Kachere).

It should be noted that the visits took place during the dry and cold season. In all prisons, some prisoners were found to sleep in very harsh conditions, on the bare floor, with very few clothes on. Prisoners in Chichiri, Maula and Zomba prisons displayed rags some of them two square feet.

The lack of blankets was one of the most frequent complaints aired by the prisoners met in private or during the tour of the prisons, a fact confirmed by the prison officials.

#### Food

Food was another issue prisoners complained about almost in all prisons. Prison officers stated openly that there had been shortages in the past. A prison officer mentioned that due to insufficient stock, they were sure to have food until August but did not know what would happen beyond. Quality and quantity were still inadequate. The food produced by the prisons is the food prisoners eat. Kasungu prison is producing food for the prisons of the region including Lilongwe. The same with Mpyupyuy which provides food for the region including Zomba

4. Except at Chilwa approved school where there are a few.

complex and Mikuyu prison farm. Mzuzu prison is producing maize but the garden does not cater for prison needs all year round.

Prisoners receive only one meal per day. Meals are not balanced as prisoners eat the same thing everyday. In Mzimba, Mpyupyu, Mzuzu and Nkhata Bay, prisoners also eat porridge in the morning. The size of the prison and the kitchen equipment impact on the time when food is served. In some places, food can be served until very late in the afternoon due to water and wood problems. At Kasungu, a lot of maize is produced and after harvests, maize leaves and stems are used as fuel for the kitchen but they do not last long. Zomba prison lacks a truck to carry wood for the kitchen. In most prisons, the kitchen is not adequate to prepare for more meals and firewood is a problem. At Nkhata Bay, one cooking pot is not used due to lack of wood although it is in good working condition.

The meals are composed of maize (nsima) and boiled beans and sometimes pigeon peas, sweet potatoes and vegetables. There is almost no meat (about twice a year) nor fish. Salt is available in all prisons.

There is no specific diet for little children and babies leaving with their mothers in prison, except in Mangochi, where they grow vegetables. The food they eat is nsima and beans. It is not adapted to their age.

Food is served in plates and plastic pans provided by the prison administration but in many establishments, they have holes. In Kachere prison, prisoners complained that they had to use plastic papers as plates. People who visit their relatives in prison bring foodstuff in plastic papers and prisoners make use of them as plates. Those who do not have plastic bags sometimes use tins.

The delegation noticed that in Kachere, cooking pots were not cleaned properly. In most prisons, the kitchen area was not kept clean enough. In Chichiri for instance, the kitchen was smelling very badly due to stagnant dirty water. In Mzimba, the kitchen is next door to the toilets and nothing is put to cover the porridge prepared in the evening for the next morning. In Nkhata Bay, maize flour is not stored properly before being cooked and it could get spoiled easily.

There were complaints that new prisoners had to accept degrading behaviour to get their food ration or sugar and soap (Zomba).

Prisoners are allowed to receive food from outside except at police stations (Mangochi) where arrested persons sometimes can stay without eating anything. Some prisoners can not receive food from outside because their family live too far away.

Prisoners generally complain about the quantity and quality of food, the ration is too small. The food is tasteless or sour and not cooked enough, in particular, the way the nsima is prepared is not satisfactory (it should be stiff but it is in fact very soft). In Chichiri prison, the Special Rapporteur confirmed that the nsima was raw and watery by dipping finger in it. Beans also were not well cooked and given in plastic bags in very small quantities.

#### Contacts with outside world

The organisation of visits vary from one prison to the other depending on the working hours of prisoners. Visits are normally allowed everyday. In Zomba and Mangochi, working convicts receive visits on Saturdays (afternoon - Zomba) and Sundays; remand prisoners and condemned prisoners from Monday to Friday.

Many prisoners complained that their families lived too far away and could not visit them (Kasungu, Mzimba, Mzuzu, Zomba, Maula). However, Nkahta Bay's prison officer in charge authorises families to call the prison by telephone to talk to their relative in prison. Long term prisoners at Zomba complained that the distance was also a problem when released as they had no money to pay for transport to go back home. Women prisoners at Zomba reported that they had very few visits because families were tired of coming as they had overstayed. Others complained that families were not informed about their detention (Mangochi police station, Maula prison) especially foreigners (Kasungu, Maula). Some complained that the visits were too short (5 minutes at Maula women section and Mzuzu, 10 to 15 minutes at Mangochi prison). This was so even if families were coming from far. In other prisons (Kachere), prisoners are allowed one visitor per day for one hour. In Kasungu, when a prisoner receives a visit and he is already locked up in the cell, he is called.

Prisoners receive visits from para-legals, religious and non-governmental organisations such as Malawi Carer, SILC, National Inspectorate of Prisons. They can write and receive letters but this seems rare. This can be explained by the low level of education and the lack of writing material.

#### Recreational activities, vocational training, school, education

There are almost no activities or programmes in prison with only very limited access to a library. Some NGOs provide books and pamphlets at Mzuzu, Zomba and Chichiri prisons. There is no entertainment, and almost no sports activity

due to lack of space and equipment.

Almost all remand prisoners remain idle and no opportunity is given to convicted prisoners to participate in programmes that would help them prepare for their release and for a constructive future.

Prisoners can sometimes play football or netball at Chichiri, Zomba, Nkhata Bay and Mzuzu (convicted prisoners and women only) and Maula (women), however, the day of the visit to Mzuzu prison, women prisoners complained that they had not been allowed to play netball for three months.

Prisoners can also sometimes do some small gardening inside (Zomba, Maula, Mangochi) or outside (Nkhata Bay, Mzuzu). At Mikuyu prison, prisoners performed a play on the occasion of the visit of the Special Rapporteur. Women prisoners at Mzuzu and Maula have a radio which they tune on to hear about current affairs.

A few prisoners from Zomba prison make handicrafts on their own but there is no organised activity as such. One of the prisoners at Nkhata Bay prison is a tinsmith and proposed to do some work (repair buckets, etc.) for the prison but this was not made possible so far due to the lack of material.

There is almost no school either for adults or for juveniles except at Maula women section where there is one teacher and few students and at Chichiri where the teacher had not been able to teach for one week for lack of material (chalk). Juveniles sent to the approved schools are the only ones who benefit from educational programmes. The juveniles met at Zomba and Mzuzu prisons complained that prison was not a place for reform. Many of them were school going when arrested. They complained about the small chances of reintegration they were given.

This situation can partly explain the tension and agitation observed especially at Maula and Zomba prisons where prisoners are bored, and therefore very vocal. The authorities are aware that idleness is favourable to misbehaviour and unruliness and agreed that they should intensify their efforts to train and educate prisoners to improve self-reliance.

#### Prisoners' work and duty

According to the prison rules, convicted prisoners have to work 8 hours. In prisons with agriculture activities or workshops, convicted prisoners work in

the morning from 7.00 until between 11.00 and 12.00 (Maula, Kasungu, Mikuyu, Mangochi, Mzimba) or eight hours per day (Mpyupyu, Mzuzu). Some prisoners complained of being forced to work when sick (Mpyupyu).

It is normally the prisoners' duty to clean but this obligation does not seem to be the norm in many places. Sometimes prisoners themselves especially those on remand are unwilling to comply. The officer in charge of Kachere remand prison mentioned that the prison was accommodating a number of convicted prisoners to ensure that certain tasks such as gardening and cleaning are carried out.

The administration mentioned that prisoners working in prison farms benefit from an incentive scheme. 5% of the production is said to go to the prisoners but the delegation could not ascertain this was really implemented.

#### Open air and restrictions

Prisoners can be in open air every day. Due to shortage of staff (there were two guards on duty at Zomba at the time of visit) and darkness during winter, prisoners are locked up around 15.30, in their cells. They are let out between 6.00 and 7.00 in the morning (sometimes earlier like in Mzimba: 5.15).

Prisoners complained of being sometimes locked up even earlier, 12.00 at Kachere, 15.00 at Zomba, 14.00 at Chichiri and Maula women section while lock up is at 16.00 at Mzimba and Mzuzu.

#### Rules, discipline and punishment

New prisoners are informed orally by the welfare officer about their rights and duties upon arrival at the prison. Section 89 of the Prison Act stipulates possible punishments. When a prisoner infringes the prison rules, he is summoned by the officer in charge and warned about the punishment he brings upon himself in case he should re-offend.

There is no disciplinary cell, no restraints, or corporal punishment implemented. The Prison Act provides for disciplinary measures such as loss of remission or extra work. Punishments are implemented in case of serious or repeated offences. There is no food reduction implemented for discipline reasons although this provision is still written in the Prison Act.

Many prisoners alleged that when they complained, they would be transferred to Zomba where the conditions are known to be worse than in many other prisons.

All juveniles met at Zomba alleged that they were transferred to the adult section as a punishment if they violated prison regulations.

#### Complaint mechanisms

Prisoners can officially complain about their prison conditions through the welfare officer who solves the problem or refers it to the officer in charge. They can also complain directly to the prison officer in charge during inspections. The most common type of complaints were in connection with overstaying, requests for information about the position of the prisoner's case, request to have property back from the police, homosexuality related complaints. However, some prisoners reported that it was very difficult to use this right and that the prison administration could retaliate by transferring them to another prison. Moreover, prison officers in charge would very rarely come inside. And some prisons did not have a welfare officer at the time of the visit (Zomba).

#### Appeal procedures

The Special Rapporteur's findings are closely akin to the conclusions of the Inspectorate of Prisons. "Prisoners do not know their rights and how to exercise them"<sup>5</sup>. The right to appeal has to be exercised within 10 days following the conviction. Many prisoners did not have this information. Many of them complained about the length of appeal procedure. It took a lot of time to receive a confirmation. The vast majority of them had not received any acknowledgement of receipt of their applications (Zomba, Mangochi, Maula, Kasungu), they complained about the lack of legal aid including during the appeal process, others reported that the appeal process took sometimes longer than the sentence. They would be released before receiving the result of their appeal. At Zomba, most prisoners sentenced to death reported that they had appealed but had not received any answer or that they had not completed the appeal process, some for lack of assistance. Six of these condemned prisoners reported that their letter of appeal had not been sent to the Supreme court because it was not approved by the prison authorities.

Prisoners with mandatory sentences (civil servants sentenced according to statutory orders<sup>6</sup>) complained that appeal was possible but useless as their

5. Report to Parliament, Inspectorate of Prisons, May 2000.

6. Under this order, civil servants who have offended while on duty are punished according to a scale of mandatory sentences which can not be adapted to each case. Theft or embezzlement, whatever the amount, is punished with 5 years imprisonment for instance, etc. This order is meant to improve the use of the law.

sentences are mandatory and magistrates do not have the power to reduce them. The Special Rapporteur reiterated that on the other hand, they could be acquitted.

#### Relationships with staff and between prisoners

Generally, prisoners did not complain about ill treatment by the guards and officers. They often appreciated that the bad conditions of detention were beyond their grasp and had more to do with the general state of the premises and overcrowding. They sometimes considered that relationships with prison staff were improving (Mzimba) or very good (Nkhata Bay).

#### *Health matters*

##### General situation

Health facilities (wards) exist in seven prisons out of 23. They are all led by paramedics who are staff members of the prison and depend on the prison headquarters for their supply of medicines, equipment and personnel.

There is no qualified medical doctor in the Malawi Prison Service but the Chief medical officer for prisons who is based in Zomba is reported to have good medical experience and was in fact recruited on that ground according to the Chief Commissioner, WD Manyera.

Those prisons which do not have as yet a dispensary send their sick people to the nearest hospital, a health centre, a district or a central hospital. Convicted sick prisoners who need more complex medical examination and a long lasting treatment are usually transferred to Zomba central prison. From there they are admitted to the Zomba central hospital where a special ward is allocated to prisoners in care of specialist doctors working at the hospital. Maula's dispensary is a referral health centre for sick prisoners from all the region (East and South).

Due to overcrowding, to the very poor hygiene partly linked to a lack of soap and the associated health and promiscuity problems that can be seen today in practically all of the country's prisons, illnesses such as scabies and tuberculosis are on the point of being endemic in Malawian prisons. Diseases like malaria, infections, pulmonary diseases and others digestive troubles are connected to the very unbalanced diet prevailing in all prisons, and are yet the other preoccupying diseases. This has implications for public health.

## The main problems

### *The unsuitability of prison dispensaries*

This state of affairs is partly due to the fact that the prisons themselves are antiquated, overcrowded and do not have any purpose built dispensary. Moreover, prison dispensaries are short of sick beds, mattresses, blankets and similar conveniences and resting rooms for sick prisoners.

At Chichiri, the prison dispensary consisted of one room where all medical services are done; medical check up, dressing wounds, injections etc. It is also used by a team of dentists who come twice a week from the Blantyre District health office to examine prisoners having teeth troubles. There are no sick beds or a place where contagious patients can be kept in isolation. On the day of the visit the dentist team had 19 patients registered. They extract teeth and do minor dentist care on the ground, for more complicated treatment prisoners are referred to the district hospital.

In Mulanje, a tiny room which used to be a single person cell serves as dispensary with no space for a bed to facilitate patients medical examination.

Mikuyu prison farm which houses 243 convicted prisoners has a dispensary which consists of one single room located in the administrative block and receives around 50 patients a day, it is too tiny to allow a bed inside for medical examination and has no electricity.

Zomba central prison has a comparatively large dispensary where the 1,912 inmates turn to, if need arises. An old building is used as dispensary and is separated from the other facilities of the prison. An isolation wing is located near by. At the ground floor are located the offices of the staff and a resting room with three sick beds without mattresses. 12 patients were staying in that room at time of the visit. Upstairs there were 23 patients in a room of four beds with no mattress; the second room had no bed at all, and nine patients were staying there, some of them having no blankets. In the isolation wing 10 patients were undergoing treatment for TB. Other remaining patients connected to the prison medical service may be categorised as follow: 16 patients at the central hospital, in a ward assigned to prisoners; 24 patients chronic-ill are gathered in a cell known as "Rwanda" because of the promiscuity reigning there; 17 mentally ill patients who share with nine others healthy prisoners a cell in the adult convicted bloc. Prisoners complained of the lack of sick beds, mattresses and blankets within the dispensary.

At Maula prison, the dispensary is located in a separate building all made of iron sheets measuring 9m x 6m. It has one room used for all medical needs and a tiny pharmacy. Next to the dispensary is an isolation room where TB patients are isolated during their first 2 weeks of treatment, this isolation room can take only 8 patients. Those admitted later are mixed with the other prisoners. At the time of the visit, they were 19 patients undergoing treatment for TB, four of them in the isolation room.

In Kasungu prison, the dispensary is a cell of 4m x 2m with little ventilation and no electricity. There is no isolation room for contagious diseases.

At Mzuzu prison, both the library and the dispensary share a single cell measuring 30 m x 2. 5 m; this place used to be a punishment cell.

### *The lack of proper management, medicines, medical staff and basic tools*

Medical staff lack basic tools to perform their work properly such as stethoscope, sphygmomanometer, thermometer, etc.

The problem with medicine is mostly the non conformity of medicines ordered by the medical officer in charge with dominant pathologies in prisons. The chronic shortage of Benzyl benzoate application known as "BB paint" used to treat scabies as the most prevailing disease in prison being a case in point.

Some clear dysfunction in the management of patients' medical records were noticed, making statistics less reliable: patients are not registered upon arrival at the dispensary for various reasons; the results of biomedical test are not properly recorded, etc.

At Chichiri, two qualified medical assistants and one assistant work full time at the prison as staff members, in a normal day they receive around 100 patients. We were able to verify that information from the patient's register although it had not been updated since 4<sup>th</sup> May 2001. That last day there were 121 patients who reported to the dispensary.

Patients receive treatment depending on the availability of medicines at the dispensary. Parents and relatives of prisoners are sometimes asked to contribute medicines to help prisoners get a needed medicine which is not available at the pharmacy of the dispensary of the prison.

In Mulanje, one medical assistant who is seldom in his office, according to the prisoners, works there as a staff member. In a normal day he receives up to 10 patients. No death among prisoners has been recorded since January 2000, according to prison authorities. Around 2/3 of the population of that prison

which numbers 229 have to varying degrees, a scabies problem. Eleven of them were severe as they had become infected. No treatment had been received from the prison headquarters for 10 months.

At Mikuyu prison farm, there is one medical assistant. Prisoners reported that they are not taken care of correctly when they get ill and that they are sometimes forced to work despite their being sick. The delegation was also surprised to identify among the prisoners two inmates chronically ill who have never reported to the dispensary. After verification, it was found that the said patients were too afraid to be taken to Zomba prison. One of them said "I am too weak to stand life in that prison and moreover I don't have anybody to pay me a visit there".

At Zomba, two medical assistants and two "patient attendants" comprise the staff of the dispensary, the latter take care of patients after the working hours. Asked about how many patients they are seeing a day, they simply reply: "as many as we are able to see". The day of the visit of the delegation there were 65 patients waiting for their medical examination for the second shift of the day (2.00 - 4.00 pm). The dispensary receives apparently a fair quantity of medicines, however, poor management practices hinder a proper care of prisoners illnesses, no medical staff ever visits the cell stigmatised as "Rwanda" to inquire about the health of the occupants. The delegation also witnessed numerous sick prisoners who required urgent hospital treatment but who had not been examined by prison medical staff or had not received appropriate medication. One such case was that of 26 year male prisoner received on 11 June 2001, who lost his right eye during his arrest and who may soon develop a brain infection if not taken to a specialist for appropriate treatment. Another case was that of 42 year male prisoner who got a second degree burn on his right hand during a jostling for food in the kitchen. Some prisoners also complained about the use by medical staff of one needle for more than a person, for injections. While the majority of the inmates complained about the performance of the medical service of the prison, inmates in the women, juveniles and sentenced sections told us that they are visited by the medical staff when ever they express the desire.

At Maula, two staff members are working: a medical and a hospital assistant. The first who is the one in charge, has been working at the dispensary for 8 years now and seemed to be well aware of health issues in that prison. They usually receive an average of 120 patients a day. If all the two medical staffs are present at the office, they register patients and give them medicines on the

basis of their declarations. If one of the staff members is absent, the one in the office will not be able to go through the process of registering the patients. So, she will straight away give available medicines according to patient's complaints. Those who are supposed to be referred to the hospital will benefit from a more complete medical examination, at least a clinical examination because both the stethoscope and the sphygmomanometer have been out of order for some months now. The medical staff complained about their working conditions, their office is poorly ventilated, with no electricity in it since January 2001. "It is too cold here in the dry season and too hot and humid during the rainy season" the medical assistant said. "We need proper facilities where patients will be able to reveal to us their problems behind a closed door but with a single space that is not possible", she added.

Kasungu has one medical assistant. At the time of the visit, there were seven sick prisoners in bad shape sleeping inside. Five were for malaria, one for abdominal pain and another for a chronic dry coughing. The doctor of the delegation examined the later and strongly recommended that they take him to the hospital for a TBC test. The dispensary receives around 30 patients a day. TB patients are mixed with others, even during the two first weeks when they are contagious. There was only one TB case under treatment during the visit. Half of the prison population which consisted of 362 inmates suffered from scabies. The prisoners reported to the delegation that they had not received any treatment from the dispensary for last six months. They added that the medical assistant had stopped expressing any compassion for those who came to see him for scabies as he allegedly sometimes just pushed them out of his office saying he did not have any medicine for them.

The medical assistant at Mzuzu prison takes a night shift at the new central hospital once a week because of the shortage of staff in that hospital. Despite that, the dispensary seemed to be well managed with all records properly kept. The month before the visit, there was an outbreak of scabies in the prison and they had to struggle in all directions to get some "BB paint", what they did receive was far from being enough. They also had an outbreak of dysentery in May 2001 with 20 serious cases but with no death. During the visit of the delegation there were six TB cases under treatment at the central hospital.

#### *Long delays for transfer to hospital*

It often takes a long time for police or prison administration to take sick prisoners to hospital when needed (Mikuyu prison farm, Maula and Kasungu).

At Chichiri, serious cases are normally referred to Queen Elisabeth Hospital. The ambulance is the only vehicle in the prison and is more often than not used for other duties than being at the disposal of medical staff for their patients. The delegation could cross check that information as it visited the dispensary at 11.45, and a patient who was supposed to be taken to the hospital in the early morning was still lying there waiting for the ambulance.

At Mulanje, prisoners complained about the fact that when they are to be referred to the hospital, the authorities of the prison deliberately keep putting off their transfers. As a result many of them continue to suffer in prison while their cases are beyond competence of the medical assistant of the prison. A 21 year prisoner who suffers from dry cough, diarrhoea, lost of weight for 2 month and continued to receive aspirin from the prison dispensary without getting to the hospital for further investigation and appropriate treatment. One mentally ill prisoner who happened to have murdered someone was among them. Prisoners were afraid that he might be violent to them one day in the future. The delegation recommended that he be transferred to a psychiatric hospital ward.

At Mikuyu prison farm, prisoners complained about the very long delay usually taken by prison authorities in finding a vehicle for referred sick prisoners to go to Zomba.

At Maula, prisoners complained mostly for not being taken to the hospital soon if they are sick.

At Kasungu, both remand and convicted prisoners blamed respectively the police and the Kasungu prison staff for not taking them in time to the District hospital when they were referred to by the medical assistant of the prison.

At Mzuzu, the delegation which witnessed numerous serious illnesses who should had been taken to the hospital, received complaints as that neither the prison staff nor the police reacts promptly to demand of a sick prisoner to be taken to the hospital.

#### *High rates of deaths*

At Chichiri, ten deaths occurred during 2000 and four between January and June 2001.

At Mikuyu prison, there have been no death among prisoners for the last 18 months; all serious cases are referred to Zomba.

In 2001, there were 35 deaths at Zomba prison, most of them due to TB or AIDS.

Kasungu prison recorded two deaths in 2000 and 1 in 2001.

At Mzuzu, two patients of the prison have died of TB since January 2001.

At Maula there were 28 deaths among prisoners during the year 2000, and 11 during the first semester of 2001. HIV tests were organised jointly by the health centre of the prison and the central hospital for all patients suffering from TB between December 1999 and July 2000. Eleven out of 165 TBC patients tested were found to be HIV positive.

On the other hand, there were no deaths reported at Kachere prison since 1997, and since 1999 in Mzimba prison according to the respective officers in charge.

#### *Homosexual relations*

Homosexual practices primarily target juveniles and other vulnerable prisoners. Cases were mentioned at Chichiri, where three prisoners had raped a newcomer a few months before; they were taken to the Police and the victim to the hospital for medical examination. At Mikuyu prison farm and Mzuzu, such practices were brought to the attention of the delegation by prisoners themselves and in the later by records of the dispensary about STD's and anal abscesses among prisoners who have stayed over a month in the prison, which is a very reliable indication, by itself at homosexual behaviour.

At Zomba, juveniles complained that they could be transferred to the adult units by prison officers themselves to be abused by adult prisoners. It was also alleged that young adults were abused by elders.

#### *AIDS*

There exists no sustainable programmes aimed to sensitise inmates about HIV/AIDS nor structures for the medical and psychological welfare of the ever increasing number of AIDS infected prisoners.

At Zomba, the rate of AIDS is very high. During the year 2000, as many as 58 patients died of AIDS. This year they are 30 who died from that illness so far, while the number of death for all other diseases is 35 during the first semester of the year 2001. Some of these prisoners entered the prison with the deadly virus. However, judging from reported cases of prisoners with STD's and perianal abscess, which could only have been contracted within the prison through anal intercourse and also confessions made during interviews with prisoners themselves about their sexual behaviour, it can be inferred that a certain proportion of these prisoners victims of AIDS may well have contracted the disease while in prison.

*Lack of proper attention and care in prisons where there is no health facility*  
Mpyupyu prison farm has no health facility. Sick prisoners are taken three times a week to the Makwapala health centre located 500 m from the prison. Prisoners made complaints about the standard of care at the health centre. According to them, the doctor there does not take his time to check up on his patients, they don't receive effective medicines and in addition, they are sometimes disadvantaged in comparison to other civilian patients. Due to these important issues raised, the delegation had to come over to the Doctor's office and talk it over with him.

At Kachere remand prison, it is the duty of the police to take remand prisoners to the hospital, while the few convicted prisoners are taken to the hospital by prison staff. Both categories complained about the long delay usually taken by the police and the prison staff in referring them to the hospital. Lack of time and shortage of staff are key issues involved in this problem. If the permission is obtained from the relevant authority, inmates walk to the hospital or carry their fellow inmates who are not able to walk. During the meeting with the remand prisoners, the delegation witnessed numerous sick prisoners who required urgent hospital treatment. In particular, there were five TB cases who were under treatment the day of their arrest but have not been allowed to go to the hospital in order to get the necessary medicines for their treatment.

Mangochi prison does not have any medical service or means of transport which could be used to take patients to the district hospital located 1500m far from the prison. Patients are carried to the hospital by their fellow prisoners. Most serious cases are referred to Zomba. The delegation noticed that almost all of the 133 inmates had a scabies problem. The only 13 inmates who did not were on remand and had arrived at the prison during the last 72 hours. Two prisoners with chronic dry coughing accompanied by fever and chest pain were among the group. They were complaining that they had been many times to the district hospital but the treatment given to them was not helping them much. The visit to the female section by the delegation showed a very pathetic image of two out of the three breast-feeding women with their babies in a very bad state of health. Of two and three years old, these babies could not get a trace of milk in their mother's breast who like any other prisoners were under a very unbalanced diet. As a consequence the said babies spend all day longing to eat or to taste their mother's regular meal, one that is made of maize and beans. Prompt dispositions were taken by the Special Rapporteur in consultation with the police to get these remand women out, for the sake of their babies.

At Mzimba prison, sick prisoners are normally taken for their treatment to the district hospital located just 700 m far from the prison. However, a private clinic and the district hospital itself send someone once a week to the prison to provide medical assistance to those who need it most. These hospitals acted commendably three months earlier when they decided to come to the prison and jointly treat all prisoners of their scabies. None of the 127 inmates suffered from scabies. Prisoners were worried that the scabies problem might remerge with the lack of soap and the overall deterioration of the hygiene witnessed by the delegation itself.

The 40 remandees and the 87 convicted prisoners complained respectively against the police and the prison staff for not facilitating timely transfers to the hospital when they are sick. At least five of them should have been taken to the hospital several days if not weeks before. It should be noted that one mentally ill woman who murdered her husband, nine months before was also kept in that female section with all the attendant risk for fellow prisoners and had not been taken to the hospital as yet.

In Nkhata Bay prison, prisoners who get sick are taken either to Nkhata Bay private hospital which is located nearby, provided that the parents or relatives are ready to pay the bill, or to the district hospital. Patients will then only have to register with the gate book before leaving the prison. No record of illnesses exists in the prison. During the year 2000 one death from TB occurred. However, remand prisoners strongly complained against the police who hardly ever respond to their request for transfer to the hospital for a medical examination. The officer in charge of the prison pointed out the fact that the law does not allow prison staff to take a remand prisoner to the hospital on their own. He added that on several occasions, he had drawn the attention of the police in regard to this matter to no avail.

At police stations, numerous sick prisoners who required urgent medical or surgical care had not been taken to the hospital for a first check-up. Four out of the five detainees who had health problems at Lilongwe police station got various physical trauma ranging from wounds to sprain which, they alleged, occurred during arrest.

## AREAS OF CONCERN

### *Overcrowding*

Overcrowding is the main concern in Malawi prisons. It affects all regional prisons as well as some district prisons. Overcrowding is the root cause for many of the problems highlighted in this report such as the lack of blankets, adequate food, soap, medicine, the inadequate numbers of staff and also the increase in the spread of diseases including HIV/AIDS, etc. Being locked up in cells from around 4.00 p.m. until around 7.00 a.m., prisoners spend more than 60% of their time in crowded dark cells, with a few exceptions.

Densities show where overcrowding is most problematic<sup>7</sup>.

Prisons	Prison average density in cells (number of prisoners per sq. m.)
Chichiri prison	2,29*
Mzuzu prison	1,29
Maula prison (Lilongwe)	1,05
Mzimba prison	1,15
Kachere remand centre (Lilongwe)	0,75
Kasungu prison	0,65
Zomba Central prison	0,62
Mangochi prison	0,52
Mulanje prison	0,45
Mpyupyu prison farm	0,43
Mikuyu prison	0,36
Nkhata Bay prison	0,36
Zomba Central prison - Women section	0,32
Mzimba prison for women	0,28
Mzuzu prison for women	0,25
Maula central prison - Women section	0,24
Mangochi prison for women	0,19
Kasungu prison for women	0,08

\* At Chichiri, the density inside the juveniles' unit is 3.14

<sup>7</sup> Source: survey made by the Special Rapporteur. Figures were obtained by systematically measuring the size and the population of all the cells of all the 13 prisons visited by the Special Rapporteur.

The sources of this widespread overcrowding are many:

- the buildings' capacity and their age which impede from making any rehabilitation or adjustment
- the fact that remand prisoners are not taken to court by police as often as they should (every 15 days)
- the multiplication of remand warrants and the lack of compliance with the 48 hour rule for police custody
- the fact that police are understaffed: prosecution is done by the police as well as investigation. Consequently, the police are overburdened which slows down the system and creates delays in the judiciary system
- the lack of proper investigation before arrest that contributes to overstay on remand
- the fact that police sometimes ask for money from the suspects in exchange for cases to be expedited that contributes to delays (Kasungu, Maula)
- the proportion of more than four years and life sentences. Long term prisoners contribute to a large extent of overcrowding because they stay for long periods inside prisons
- the delays in process
- the lack of legal assistance
- the absence of juvenile courts and the fact that parents have to attend court
- the presumption of innocence is ignored and a large number of people await trial in prison instead of being bailed. The tendency seems to be to put people on remand as long as investigation or criminal proceedings are in progress
- prisoners can not pay bail or provide any surety or person to stand for them to be bailed
- the long delays pending the hearing of an appeal
- the fact that courts sometimes pass long sentences for minor offences
- the fact that only remission is implemented and no other measure such as conditional release
- the fact that prisoners have to apply several times for bail without being sure to obtain it: some prisoners reported that they had applied for bail to the High Court, the latter had referred them to a Magistrate Court which had then referred them to the High Court again. Often bail

is not even granted and the prisoner has to apply again. This contributes to slow down the justice

- the fact that court orders are not followed and prisoners with two sentences serve them consecutively when the court had ordered that they should be served concurrently, that is to say that only the longest sentence should be served
- recidivism due to the fact that prisoners have no access to rehabilitative programmes in prison

The consequences of overcrowding lead inter alia to:

- failure to respect strict separation of prisoners
- difficulty in organising prison life and have prison rules respected
- difficulty in individualising treatment and developing release programmes including work and vocational training. A probable consequence is recidivism which impacts on overcrowding and creates a vicious circle
- high promiscuity and spread of diseases
- difficulty in maintaining the facilities
- difficult conditions of work for the staff and officers, lack of personnel (specialised staff more particularly)
- security and surety problems (escapes, abuse and violence)
- food and water/sanitation problems
- hygiene problems due to lack of soap, of cleaning tools, and limited access to bathing facilities and water
- lack of plates and dishes, bedding and blankets, clothes
- lack of exercise where outdoor space is limited
- difficulty in bringing sick prisoners to hospital due to lack of staff
- lack of medicine
- unequal treatment: those who receive assistance from outside have better conditions than those who do not and do not receive either basic necessities from the prison administration

The Special Rapporteur would like to stress again that by reducing overcrowding, a large number of these problems would be solved.

### ***Breast-feeding mothers and children in prison***

The conditions of detention of women are more humane in Malawi. However, this appreciation can definitely not be extended to the old women, expecting mothers and women detained with their children that the delegation met in the prisons visited.

Prison is not a safe place for pregnant women, babies and young children and it is not advisable to separate babies and young children from their mothers. However, it is possible to find solutions so that these women are not imprisoned: use of bail for remand prisoners, non-custodial sentences or conditional/early release, parole, probation, suspended sentences for convicted prisoners.

At Zomba, a mother has been detained with her 14 months old baby. The child has been in prison since May 2001. He has no clothing.

In Maula, a pregnant woman has been sentenced to two years. There are also two children (2 years, 1 year). One was born in the prison and has been detained with his mother since 1998. The other arrived with his mother in February 2000. There are also three old women aged more than 60.

At Mangochi there are two women detained with their babies (1 year, 2 years). The children are very sick. See also paragraph on health matters.

There is one expecting woman at Mzimba (3 months).

The Special Rapporteur strongly recommended that these women and children should be released as soon as possible so that they can be taken care of properly by the community. It should be noted that the State President, Dr Bakili Muluzi released the mother with two kids soon after the end of the visit of the Special Rapporteur.

### ***Juveniles***

It seemed to the delegation that the treatment of juveniles is worse than that of any other prisoner. They suffer more from overcrowding, lack of exercise, lack of educational programmes, lack of legal assistance, harsh sentencing practice, sexual abuse.

The Special Rapporteur would like to recommend that an approved school be opened in all regions and provided with adequate resources so that all juveniles be sent there instead of prisons. Alternatives to imprisonment (diversion, mediation) should also be implemented for juveniles and legal assistance

improved to ensure that juveniles do not overstay in prison.

### ***Foreigners***

In every prison of the world, foreign prisoners face particular and increased hardships. Many of them have problems with the language(s) of the country of detention, problems of communication with staff, with the personnel of the administration of justice and with other prisoners. They have often lost contact with their family. They do not know the laws of the country and their means of defence. They do not have legal assistance and can overstay in prison. They have difficulties in getting in touch with the diplomatic or consular representatives of their country. They can have health problems.

Malawi authorities should pay particular attention to the foreigners detained in its prisons. In particular, the delegation found at least two of them from Cameroon, detained at Maula, who have served their sentence but are kept in prison because the immigration has not yet dealt with their case. The nearest embassy from their country is in South Africa and they have no contact with them. Prison authorities should make sure that immigration department is informed in advance when a prisoner will be eligible for release.

All efforts possible should be made to speed up the procedures for foreigners under detention order awaiting transfer or expulsion to their country of origin. There was at least one Zambian at Mzuzu prison in such a situation.

### ***Sexual abuse against young prisoners and juveniles***

Juveniles at Chichiri (four of them), Zomba and Maula complained that some of them had been victim of sexual abuse when they were transferred to the adult section of the prison as they reached their maturity and were considered to be old enough to be transferred to this section. Adults would propose sex in exchange for food and a place to sleep. Some of them would also come from other prisons (Mulanje). Some of them complained and were transferred back to the juveniles section but others remained.

Three young prisoners interviewed in Zomba adult sections confirmed that there were many cases of homosexual relations. Adults would help young prisoners but also abuse them and use them as their "wives".

At Zomba, prisoners also reported that some officers were paid by adult prisoners to organise the transfer of juveniles to the adult sections.

A report on HIV/AIDS in Malawi prisons commissioned by Penal Reform International (PRI) at the invitation of the prison administration also documents this problem.

The Special Rapporteur urges Malawi authorities to take up this issue and ensure that juveniles and young prisoners in Malawi are no longer subject to violence and degrading treatment and that their dignity is respected. Authorities should in particular ensure that separation of adults and juveniles is strictly enforced.

Authorities should also inquire about allegations of transfer of juveniles to adult sections and punish all prison officers who would be party to this terrible traffic.

#### *Allegations of corruption and ill-treatment of prisoners and harassment of prisoners' visiting families*

Women detained at Maula reported that they were ill-treated by warders (verbal assaults). The latter would systematically ask for a share of all that prisoners receive from outside (half of the food notably). Prison warders were also reported to be negligent, to lock prisoners at 2 p.m. to get rid of them, to forbid them to wear bras, to make their hair and to dance and even to exercise by playing netball.

At Mzuzu, prisoners complained about verbal assaults by drunk prison officers and beatings. They would also be beaten up or transferred to Zomba if they complained. Prison officers would take up to 50% of the money a family is bringing to allow for the money to be given to a prisoner. Juveniles complained that their mothers were sometimes harassed by junior prison officers. They would court the mothers outside and even visit them at home saying that they would give them information about their child in prison if they had sex with them. Other prisoners complained that their wives were also harassed by the same officers. It was also reported that prison officers would say that prisoners had no rights in prison.

The Special Rapporteur would like to remind Malawi authorities that all prisoners are entitled to equal treatment without discrimination. The only right which prisoners are deprived of is freedom of movement outside prison. In order to improve hygiene in prison, prisoners should not be prevented from making their hair but rather encouraged to do it in order to avoid the spread of louses. The authorities should enquire about prison officers' attitudes and punish wrongdoers. Authorities should command prison officers to behave in conformity with the

prison rules and principles of dignity and stop degrading behaviour towards prisoners and their families, theft and blackmailing practices.

#### *Allegations of corruption and ill-treatment at police stations*

Cases of ill-treatment and corruption at police stations were very often brought to the attention of the Special Rapporteur and practices reported below do not seem to be isolated cases.

Prisoners at Zomba prison reported that they had been ill treated at police stations by the Criminal Investigation Department officers. One of them had lost one eye after being beaten with boots during interrogation at Jari police station. The police took him to hospital 18 days after the arrest where he stayed 15 days before being transferred to the prison. Prisoners at Maula and Mzimba prisons complained that they were ill-treated by police. Some were beaten with bottles, sticks or burglar bars during interrogation and forced to sign the confession. Remand prisoners at Kachere complained that they were beaten during investigation with horse pipes. They were forced to sign their confessions. One suspect allegedly died in March 2001 at Kasungu police station after being beaten up during interrogation. Prisoners also complained that they could be arrested and kept 48 hours without being informed about the reason for their arrest (Kasungu). At Lilongwe police station, the delegation found that 17 out of the 43 men detained complained about forced confession and beatings during interrogation. They also reported that conditions in police cells were very bad.

At Zomba, prisoners also reported that property was being forfeited by police to the home of suspects, that police sometimes fabricated evidence implicating accused persons.

It was also brought to the delegation's attention that remand warrants were not respected and that several warrants could be issued for the same person and same case. Therefore, suspects could spend much more than the authorised 48 hours under police custody. At Lilongwe police station, it was found that the majority of the suspects detained had been under police custody for more than two days. One had been detained at the police station for three weeks with almost no food.

Suspects detained at police stations reported that the only food they could get was from outside, when their families were not too far away (Mangochi). Some complained that they were not allowed food from their family or were not allowed

to buy food from outside (Lilongwe). They also reported that often, families were not even informed that they had been arrested and detained at such police station.

Prisoners reported that police officers were corrupt (Maula, Kasungu). They would ask for a 1,000 or 2,000 Kwacha bribe to ensure that a suspect is granted bail and not sent to prison. A prisoner at Maula reported that he had paid 6,000 Kwacha to a police prosecutor to facilitate bail but was sent to prison and was never bailed. Prisoners mentioned that the vast majority of those who bribed police officers are not bailed either.

On the occasion of a meeting held in Lilongwe in celebration of the UN day against torture on 26 June 2001, a police commander stated that police was working hard towards reducing torture of suspects and new methods of investigation were being introduced. "Slowly torture is reducing but there are pockets of police officers who are resistant to change". This tells about what is happening at police stations.

The Inspectorate of Police should investigate all ill-treatment at police stations including raping of women suspects.

Authorities should make sure that an end is put to this type of practice and that wrongdoers are punished.

## AREAS OF GOOD PRACTICE

### *National Inspectorate of Prisons*

An Inspectorate of Prisons was established by the new Constitution. It started its activities in July 1995. The objective of this Inspectorate is to monitor conditions of detention and the overall organisation and functioning of the prison system in Malawi. It is composed of magistrates, high level officials of the prison administration, lawyers, etc. The Inspectorate regularly visits prisons of the country and reports to Parliament. Three reports have been submitted to Parliament so far.

The Special Rapporteur would like to congratulate this body for the commendable work it is performing and the quality of its reports and recommendations. The Special Rapporteur appreciates that due to these reports, the Malawi authorities are aware of the situation prevailing in prisons and what needs to be done to remedy the problems brought to their attention.

The Special Rapporteur would like to urge Malawi authorities to execute the recommendations of the Inspectorate as it would tremendously help improve prisoners' conditions, rehabilitation of offenders and prison staff working conditions.

### *Prison farms*

Prison farms have been developed by the prison administration since 1997. Their production now covers 45% of prisoners' food needs. The farms produce some 25% of the maize needs of the prison. One prison farm operates as an open prison. They are for prisoners with good behaviour in the final stage of their sentence. According to the administration, prisoners working in prison farms should benefit from an incentive scheme. These centres are a good example of productive and cost effective imprisonment.

However, it should be mentioned that prisoners complained that they were treated like animals (nothing to sleep on, lack of space), that their food was not better although they were working and producing a lot and that they were forced to work when sick (Mpyupyu).

Productivity to ensure prisons' food self-sufficiency is clearly one of the objectives of these prison farms and is commended. It should be recommended that humane treatment be improved and considered as an equal ranking objective.

### *Para-legals and collaboration between civil society organisations and the justice system*

The Para-legal Advisory Service is a joint initiative of the prison administration and non-governmental organisations. It is a pilot project implemented in the four biggest prisons of the country (Zomba, Chichiri, Maula and Mzuzu). Para-legals come from NGOs and work in prison where they give prisoners legal advice, attend to matters of bail and bring problems to the attention of lawyers. They also follow-up cases in collaboration with the relevant authorities at the level of the prison administration, the police and the courts to ensure that files are dealt with in due course and prisoners have information. They work for all prisoners but give priority to a number of vulnerable categories such as juveniles, women with children, mentally ill, very sick prisoners and foreigners. Para-legals also observe trials and write reports. So far, their work has led to the release of over 200 persons.

The Special Rapporteur would like to congratulate the authorities and NGOs for this positive and very useful initiative and encourage them to extend it to all prisons of the country to help improve access to justice, reduce overcrowding and improve prison conditions.

### *The role of civil society and NGOs*

Civil society organisations are aware of prison conditions and justice related problems. Some of them are very active and involved in programmes of civic education to prevent crime by sensitising and educating local communities in various fields such as beatings of women, rape, etc. They are also developing activities with prisoners and give them the opportunity to express themselves through the 'New Hope' newsletter. They are also helping with legal assistance and contributing to the development of mediation and community policing to divert as many cases as possible from the State justice system. They are also trying to develop human rights training for prison staff.

## CONCLUSIONS AND RECOMMENDATIONS

### *Requests for information*

The Special Rapporteur would be grateful to the Malawi authorities if they could provide further information on the following issues:

- State of implementation of the recommendations made by the Inspectorate of Prisons
- Efforts made by the Government to update the prison legislation
- Current status of penal reform (funded by the EU).

### *Further measures proposed by the Special Rapporteur*

On top of the recommendations already formulated in the course of this report, the Special Rapporteur would like to express its support of the recommendations made by the Inspectorate of Prisons, to reiterate a certain number of them and make other specific concrete recommendations for action.

### *General recommendations*

- (a) Parliament should vote an adequate budget for Malawi prisons to ensure that conditions of detention do not amount to inhuman or degrading treatment. Where donor assistance has been offered, implementation of the workplan agreed should proceed without delay
- (b) Overcrowding
  - A maximum occupancy level should be established for each place of detention.
  - Suspended sentences, conditional release, parole, probation, diversion should be promoted and implemented to reduce prison population and improve the rehabilitation of offenders.
  - The community service pilot scheme should be energised, allocated with adequate means and extended at national level.
  - Mediation and community policing should be encouraged provided that individual rights are respected.
  - More prisons' activity programmes (including education, sport and recreational activities) should be introduced as overcrowding is brought down.

NGOs should get involved in programmes for prisoner's rehabilitation (income generating, skill learning) to prepare them for their eventual release and their being integrated into society.

(c) Overstaying on remand

Police should speed up the screening process so that those found not involved in any crime should be released from prison. This will help reduce overcrowding as well.

Illegal remand detention should be reduced and remand warrants respected.

More prisoners should be bailed.

A better range of activities should be offered to any remand prisoner staying for a lengthy period.

(d) Premises

Prison rehabilitation should be intensified and the building of new prisons should be completed to allow for the transfer of prisoners to more human places. All efforts should be made to ensure that prisoners are detained in purpose-built premises.

Zomba central prison steps are in very dangerous state and must be replaced promptly before they collapse and cause damage to life.

Mzimba prison should be closed and a new one opened.

Measures towards the separation of different categories of prisoners should be undertaken as overcrowding is brought down.

Kitchen facilities should be put right so as to cater for a balanced and regular diet.

The shower, toilets and washing facilities should be extended in proportion to the number of prisoners and existing ones restored to a good state of repair.

(e) Food

The balance, quantity and quality of food should be improved.

(f) Blankets and uniforms

All prisoners should be provided with at least two blankets and adequate clothing.

(g) Hygiene and cleanliness

The shower, toilets and washing facilities should be maintained in a hygienic condition in all places where problems were observed.

NGOs should strengthen their activities in the prison by developing education programmes for prisoners including about hygiene, health, HIV/AIDS.

(h) Rules

To enforce discipline and order, rules should be explained to prisoners as well as disciplinary measures and this information be made available through posters and leaflets inside all prisons.

Prisoners should be informed about their rights.

(i) Women and children

Expecting and breast-feeding mothers, elderly women should not be sent to prison.

(j) Juveniles

Specialised units for juveniles should be developed and in the meantime strict separation between adults and young people should be maintained.

Young persons in custody should be provided with a full regime of educational, recreational and other purposeful activities. Physical education should constitute a significant element of that regime. Moreover, the staff assigned to units accommodating juveniles should be carefully chosen and, more specifically, be persons capable of guiding and motivating young people.

First young offenders and petty young offenders should be given a chance not to go to prison and diversion measures be implemented to allow them continue their education. Mozambique could develop exchanges with Malawi about juvenile justice.

Approved schools should receive an adequate budget from the line Ministry.

(k) Foreigners

Prisoners should systematically be given the possibility of informing their nearest embassy that they are in prison.

Appropriate steps should be taken to minimise the difficulties of communication between prison staff and foreign prisoners (preparation and translation into relevant foreign languages of a leaflet describing the routine and regime of the prison, the rights and responsibilities of prisoners and staff, complaints and disciplinary procedures; translation of the most commonly used expressions between prisoners and staff).

Deportation and transfer of willing prisoners should be organised more systematically.

Immigration department should ensure that foreigners who have served their sentence and want to go back home are promptly repatriated.

Prison services should anticipate the release of foreign prisoners and inform the immigration department well in advance.

(l) Prison Act

The Prison Act should be updated in conformity with international standards.

(m) Management

In order to improve the supply of basic necessities to prisons, the prison administration should consider to implement requests for supplies from outlying stations and fight against corrupt practices in the quarter-master's stores and staff. This would help better control expenditures and the way goods provided are utilised.

(n) Staff

A priority should be given to human rights education for officers and guards of all ranks and in-house training of prison staff and police.

(o) Ill-treatment

The Inspectorate of Police and of Prisons should investigate allegations of ill-treatment in respectively police stations and prisons.

Authorities should make sure that an end is put to this type of practice and that wrongdoers are punished.

### ***Health recommendations***

- (a) Existing dispensaries should be renovated and extended and health infrastructures should be created in large prisons where they do not exist.

These structures should include offices for medical staff where prisoners can openly discuss with and reveal to doctors their problems; beds for patients kept under observation; and isolation rooms for patients with contagious diseases.

- (b) Qualified doctors should be recruited in full time positions for the larger prisons and existing paramedical staff should be strengthened. It is of utmost importance that Zomba central prison has a qualified

doctor as a staff member and that the current clinical medical officer of the prison be assisted by another doctor with a good background in epidemiology and in the management of public health services. This will enable the said clinical medical officer to be up on morbidity and mortality facts in prisons and to react accordingly.

- (c) The clinical medical officer will need to rethink his policy of medicines supply to prisons which should be based on prisons' identified needs. Besides, there should exist standardised Guidelines for all prison medical services to follow, regarding the management of statistics and medical records of prisoners.
- (d) HIV/AIDS education programmes in prisons should be intensified. Furthermore, voluntary testing for HIV/AIDS in prisons should be encouraged and suitable structure should be put in place for the psychological and medical support of prisoners who decide to take the test, those who are HIV positive and those already suffering from AIDS. To this end, prison medical staff must, at first, be trained on AIDS prevention and in counselling.

## ANNEXES

### COMMENTS FROM THE GOVERNMENT

The Chief Commissioner of Prisons

*Re-Report of the Commissioner and Special Rapporteur on Prisons and Conditions of Detention in Africa Visits of Malawi Prisons from 17th to 28th June 2001*

I write with reference to your report submitted to this office following your visit to Malawi Prisons during the above stated period.

Thank you very much for your detailed report in which a number of observations and recommendations have been made. Pended below are our comments on some of the concerns raised:

(i) Presence of Long Term Prisoners in District Prisons

It is indeed true that our Prisons are categorised into classes and each class hold a different type of prisoners. However, depending on circumstances these class are sometimes not taken into consideration. Some of the reasons being:

- a. Some prisoners might be long term prisoners but would want on request to be near home/relatives so that they can be visited or assisted.
- b. Prisoners due for release are in most cases transferred to Prisons of home district to overcome transport problems.
- c. Some prisoners might be sick hence requiring their relatives' attention and on humanitarian grounds can be transferred to their home district.
- d. Some prisoners of further charges are normally transferred to places where they committed their offences when dates of their trials have been communicated through production orders by Courts.

(ii) Separation between adults and juveniles

Juveniles are separated from adult prisoners. It is true that in some Prisons there are no specific Sections designed to meet the purpose. However, Officers make sure that the two do not mix especially at night. Therefore taking juveniles to adult sections for sexual abuse as punishment is not true, but a mere allegation.

(iii) Confiscation of prisoners personal properties

The Prison Act and Regulations provide us with orders to follow during search. Time and again, Prison Officers are reminded of their obligation and see to it that prisoners personal properties are not confiscated. Those contravening the regulations are dealt with disciplinarily.

(iv) Electricity

Most of Prisons which did not have electricity in the past have electricity now and on going until all the Prisons have been electrified.

(v) Water, sanitation, bathing and toilet facilities

The sanitation in most Prisons has improved for the better. For example the condemned Section at Zomba Central Prison has toilets now. In addition in some Prisons have formed health committees to sort out the sanitation problem.

(vi) Library

The report states that only Muzu has a library. This is not true. Blantyre, Zomba Central Prison and Maula have libraries. The only problem is the storage of book in these libraries. In addition to this, prisoners have access to radio and newspapers.

(vii) Food

It is indeed true that prisoners do not have a balanced diet. This is due to inadequate funding. However, though not balanced, prisoners are issued enough ration. Some prisoners cook for their fellow prisoners as cooks and if the nsima prepared is not hard enough, then there is a problem with the prisoners themselves. However, member of staff who supervise them make sure that the small provided is of good quality.

(viii) Contacts with outside world

Prisoners on admission are told about their right to communicate with their relatives and friends through letters. In this connection they are issued postage stamps, paper, pen and envelopes when requested. They also receive visits by family members, friends and religious groups.

(ix) Recreational activities, Vocational training, School, Education

There are indeed few sporting activities taking places in most Prisons. As for education, Zomba Central Prison has been awarded a Centre Number for Government Examinations. Candidates (Prisoners) both at Primary and Secondary will sit for examination this year. The programme is likely to extend to other stations. There are also rehabilitation programmes for the inmates at

Zomba Central Prison. This will now be extended to other Prisons.

(x) Appeal Procedures

Prisoners on admission to Prison are told about their right to appeal. When appeals have been received, they are forwarded immediately. Therefore, the question of authorities approving appeals before they are sent does not arise. The role of the prison is to forward not to approve, let alone sensor them.

(xi) Homosexuality

While it is undeniable fact that homosexuality may exist in our Prisons, it is very difficult to prove if it happens, as it is done in the absence of Prison Officers and behind curtains. It is therefore not true that juveniles at Zomba Central Prison are taken to adults for homosexuality as punishment.

(xii) Overcrowding in Prisons

It is indeed true that Malawi prisons are overcrowded. This is why we urge Courts to use alternative to imprisonment and other interventions.

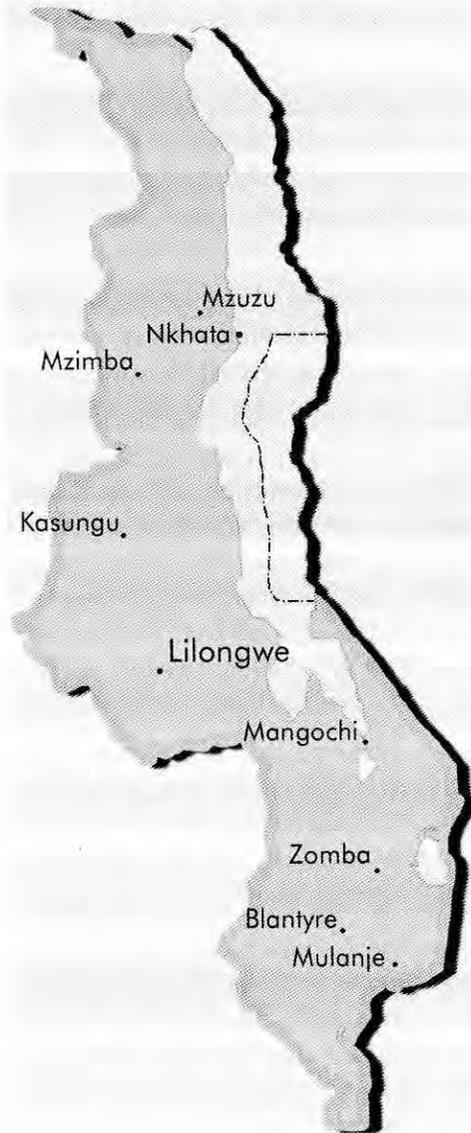
(xiii) Conclusion/Vote of Thanks

I wish to thank the delegation for the comprehensive report. The areas of concern pointed out have been noted for our necessary action where possible. Funds permitting, we will implement most of the recommendations. Please accept our apologies for the delay in responding to your letter and any inconveniences this might have caused.

W.D. Manyera

Chief Commissioner of Prisons

## LOCATION OF THE PLACES VISITED



Maula Central Prison and Kachere remand prison are located in *Lilongwe*.

Chichiri prison is located in *Blantyre*.

Mpyupyu prison farm, Chilwa approved school and Mikuyu prison are located in *Zomba's* area.

## PHOTOS



A guard in Mpyupyu prison.



Inside Zomba prison.



A cell in Mpyupyu prison.

## THE SPECIAL RAPPOREUR ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

### *The Mechanism of the Special Rapporteur*

The African Commission on Human and Peoples' Rights (ACHPR, hereafter the Commission) is an organ of the African Union (AU). The Commission's function is to monitor the implementation and respect of the African Charter on Human and Peoples' Rights. The Commission convenes twice a year for sessions during which the main points of its mandate and progress made by member States for a better implementation of the Rights protected by the Charter are discussed.

In accordance with its mandate under Article 45 of the African Charter on Human and Peoples' Rights, the Commission established during its 20th session in Maurice, in October 1996, the position of Special Rapporteur on Prisons and Conditions of Detention in Africa. Commissioner Prof. E.V.O. Dankwa (Ghana), was appointed as the first Special Rapporteur. His mandate was renewed in 1998 and in 1999, he was elected Chairperson of the ACHPR. During its 28th ordinary session in Benin, in October 2000, the Commission nominated Commissioner Dr. Vera Mlangazuwa Chirwa, at the post of Special Rapporteur on Prisons and Conditions of Detention in Africa.

The terms of reference for the work of the Special Rapporteur have been set by the Commission as follows:

### *Methods of work*

The Special Rapporteur shall:

- examine the state of prisons and conditions of detention in Africa and make recommendations with a view to improving them;
- advocate adherence to the Charter and international human rights norms and standards concerning the rights of persons deprived of their liberty and the conditions in which they are held, examine the relevant national law and regulations in the respective States Parties as well as their implementation and make appropriate recommendations on their conformity with the Charter and with international law and standards;

- make recommendations to the Commission as regards communications submitted to it, by individuals who have been deprived of their liberty, by their families or representatives, by NGOs or other persons or institutions;
- propose appropriate urgent action.

The Special Rapporteur shall conduct studies into conditions or situations contributing to human rights violations of persons deprived of their liberty and recommend preventive measures. The Special Rapporteur shall co-ordinate activities with other relevant Special Rapporteurs and Working Groups of the African Commission and United Nations.

The Special Rapporteur shall submit an annual report to the Commission. The report shall be published and widely disseminated in accordance with the relevant provisions of the Charter.

### *Means of implementing the mandate*

The Special Rapporteur shall seek and receive information from States Parties to the Charter, individuals, national and international organisations and institutions as well as other relevant bodies on cases or situations which fall within the scope of the mandate described above.

In order to discharge his mandate effectively the Special Rapporteur should be given all the necessary assistance and co-operation to carry out on-site visits and receive information from individuals who have been deprived of their liberty, their families or representatives, from governmental or non- governmental organisations and individuals.

The Special Rapporteur shall seek co-operation with States Parties and assurance from the latter that persons, organisations or institutions rendering or providing information to the Special Rapporteur shall not be prejudiced thereby.

Every effort will be made to place at the disposal of the Special Rapporteur resources to carry out his/her mandate.

### *Visits*

The Special Rapporteur visits various countries in order to obtain in the field, first hand information. He/She meets with the authorities of the country, Heads of the Prisons Services, human rights non-governmental organisations, and representatives of civil society. He/She visits prisons, police and gendarmerie

cells, or any other place where people are imprisoned or jailed. During these visits, the Special Rapporteur requests access to all units in the prisons: punishment cells, women or juveniles' units, sick-bays, etc. He/She has confidential interviews with prisoners and discussions with prison staff and officials.

### *Visit Reports*

Before leaving the country, the Special Rapporteur has further interviews with the authorities and the Head of the Prisons Service to share and discuss his observations. He/She makes a number of on the spot recommendations on the most pressing problems. The Special Rapporteur then writes his/her report of the visit and submits it to the government of the visited country, who is then invited to make comments or observations, and describe the measures taken since the visit of the Special Rapporteur. The SR's observations and the comments by the government are then published in three of the four working languages of the AU, i.e. English, French and Portuguese. Some reports are also published in Arabic. When the comments by the government are not received within a reasonable period of time, the report might be published without them.

### *Countries visited by the Special Rapporteur*

<b>Zimbabwe:</b>	February-March 1997.
<b>Mali:</b>	August 1997.
<b>Mozambique:</b>	December 1997.
<b>Madagascar:</b>	February 1998.
<b>Mali:</b>	December 1998. (2 <sup>nd</sup> visit).
<b>The Gambia:</b>	June 1999.
<b>Benin:</b>	August 1999.
<b>Central African Republic:</b>	June 2000.
<b>Mozambique:</b>	April 2001 (2 <sup>nd</sup> visit).
<b>Malawi:</b>	June 2001.
<b>Namibia :</b>	September 2001.
<b>Uganda :</b>	March 2002.

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