

N.Y. Times November 6, 2005

## The Forgotten of Africa, Wasting Away in Jails Without Trial

By MICHAEL WINES

LILONGWE, [Malawi](#) - Since Nov. 10, 1999, Lackson Sikayenera has been incarcerated in Maula Prison, a dozen iron-roofed barracks set on yellow dirt and hemmed by barbed wire just outside Malawi's capital city.

He eats one meal of porridge daily. He spends 14 hours each day in a cell with 160 other men, packed on the concrete floor, unable even to move. The water is dirty; the toilets foul. Disease is rife.

But the worst part may be that in the case of Mr. Sikayenera, who is accused of killing his brother, the charges against him have not yet even reached a court. Almost certainly, they never will. For sometime after November 1999, justice officials lost his case file. His guards know where he is. But for all Malawi's courts know, he does not exist.

"Why is it that my file is missing?" he asked, his voice a mix of rage and desperation. "Who took my file? Why do I suffer like this? Should I keep on staying in prison just because my file is not found? For how long should I stay in prison? For how long?"

This is life in Malawi's high-security prisons, Dickens in the tropics, places of cruel, but hardly unusual punishment. Prosecutors, judges, even prison wardens agree that conditions are unbearable, confinements intolerably long, justice scandalously uneven.

But by African standards, Malawi is not the worst place to do time. For many of Africa's one million prison inmates, conditions are equally unspeakable - or more so.

The inhumanity of African prisons is a shame that hides in plain sight. Black Beach Prison in [Equatorial Guinea](#) is notorious for torture. Food is so scarce in [Zambia's](#) jails that gangs wield it as an instrument of power. Congo's prisons have housed children as young as 8. Kenyan prisoners perish from easily curable diseases like gastroenteritis.

When the African Commission on Human and Peoples' Rights last visited the [Central African Republic's](#) prisons in 2000, it heard that officers had deemed 50 prisoners incorrigible. Then, dispensing with trials, they executed them.

Even the African Commission's special representative for inmates has not visited an African prison in 18 months. There is no money, said the representative, Vera Chirwa, a democracy activist who herself spent 12 years in Malawi jails under a dictatorship.

"The conditions are almost the same," Ms. Chirwa said. "In Malawi, in [South Africa](#), in [Mozambique](#), in almost every country I have visited. I've been to [France](#), and I've seen the prisons there. In Africa, they would be hotels."

Most African governments spend little on justice, and what little is spent goes mostly to the police and courts, said Marie-Dominique Parent, the Malawi-based regional director of Penal Reform International, a British advocacy group. Prisons, she said, "are at the bottom of the heap."

With so much misery among law-abiding citizens, the world's poorest nations have little incentive to improve convicts' lives. But, then, not everyone in African prisons is a convict.

Two-thirds of [Uganda's](#) 18,000 prison inmates have not been tried. The same is true of three-fourths of Mozambique's prisoners, and four-fifths of [Cameroon's](#). Even in South Africa, Africa's most advanced nation, inmates in Johannesburg Prison have waited seven years to see a judge.

Some of Africa's one million or so prisoners - nobody knows how many - are not lawbreakers, but victims of incompetence or corruption or justice systems that are simply understaffed, underfinanced and overwhelmed. [Kenya's](#) former prisons commissioner suggested last year that with proper legal representation, a fifth of his nation's 55,000 prisoners might be declared innocent.

The most immediate and apparent inhumanity is the overcrowding that Africa's broken systems breed, compounded by disease, filth, abuse, and a lack of food, soap, beds, clothes or recreation. A survey of 27 African governments by Penal Reform International found that national prison systems operated, on average, at 141 percent of capacity. Individual prisons were even more jammed: Luzira Prison, Uganda's largest, holds 5,000 in a 1950's facility built for 600.

Babati Prison in [Tanzania](#), built for 50 inmates, housed 589 as of March.

Malawi's 9,800 inmates, living in effectively the same cells that were too crowded when they housed 4,500 a decade ago, are luckier than many. Three years ago, half the prisoners had yet to go before a judge. Under a pioneering program run by Penal Reform International and financed in part by the British government, paralegals have winnowed that to fewer than one in four - among the lowest rates in sub-Saharan Africa.

Yet the flood of newly accused still outstrips Malawi's ability to deliver justice.

"This is not a hotel, where we can accommodate no more than our capacity," said Tobias Nowa, Malawi's commissioner of prison operations. "We must accommodate whomever is sent to us."

## **Prison Population Doubles**

Paradoxically, democracy's advent has catalyzed the problems of Africa's prisons. Freedom has permitted lawlessness, newly empowered citizens have demanded order - and governments have delivered.

Malawi's prison population has more than doubled since the dictatorship ended in 1994. But its justice system is so badly broken that it is hard to know where to begin repairs.

Malawi's 12 million citizens have 28 legal aid attorneys and eight prosecutors with law degrees. There are jobs for 32 prosecutors, but salaries are so low that the vacancies go unfilled.

So except in special cases like murder and manslaughter, almost all accused go to trial without lawyers. The police prosecutors who try them have only basic legal training. And the lay magistrates who sit in judgment are largely unschooled in the law.

Justice Andrew Nyirenda, 49, the chief of Malawi's High Court, said the system had been swamped by the growth and rising complexity of crime since Malawi became a democracy in 1994.

"There are conspiracies to commit crimes, drug trafficking, even human trafficking, and instances of lower-level white-collar crimes where people are literally swindling institutions," he said. "These are extremely complicated cases for people who have not been trained sufficiently. We get convictions that aren't supposed to be convictions, and acquittals that aren't supposed to be acquittals."

Pacharo Kayira, one of the eight prosecutors, seconds that. "I've done so many cases where I don't agree with the conviction by the lower court," he said in an interview here. "It's not the best situation, to say the least."

Malawi's police officers can take two years merely to send prosecutors their report on a homicide. Prosecutors need months more to decide whether the case should be taken to a lower court, the start of a legal process that lasts years.

Malawi's High Court, which must pass judgment on all capital crimes, has not heard a single homicide case in the last year. There is no money to assemble lawyers, judges and witnesses for hearings in the locales where the crimes occurred; no money to empanel juries as required since 1995; no money for the written record that the Supreme Court needs for its mandatory review of convictions.

Ishmael Wadi, Malawi's director of public prosecutions, said his eight prosecutors had a backlog of 44 untried fraud and tax-evasion cases, 173 robbery and theft cases, 388 fatal accident cases and 867 homicide cases.

"When the offenses occur, they send the files to this office," he said. "The files keep on coming, so the number keeps increasing. So what do you do? You accumulate the files, keep them nice and put them on the shelves."

And the caseload is rising. Capital crimes - homicide, rape and manslaughter - consume virtually all the time of legal-aid lawyers and prosecutors. While they process about 380 homicides a year, 500 to 600 other homicides are committed.

Shortages of judges, prosecutors and lawyers ensure that justice is both sluggish and mean. Many inmates sit in cells for lack of bail that can total less than \$10 or \$20.

The interminable wait between arrest and courtroom torments the innocent and lets the guilty escape justice. Evidence in police stations is misplaced or discarded. Witnesses die and move away.

Mr. Kayira, the prosecutor, encounters such cases far too often, after much life has been wasted and long terms already served, by both the innocent and the guilty.

"There have been many times when I have used the discretion granted me as a prosecutor to tell the police to release a person who has been there five, six years," he said. "I look at their file and say to myself, 'There isn't the evidence here to convict this person.' " For prisoners like Lackson Sikayenera, their cases lost in a system that only sporadically works, the only alternative is to hope someone hears their pleas for help - and to make a new life.

### **The Road to Prison**

Built 40 years ago to house 800 inmates, Maula Prison, on a recent visit, held 1,805 inmates, all but 24 of them men. Mr. Sikayenera lives in Maula's Cell 3, one of 160 in a pen the size of a two-car garage.

Once a farmer near Dowa, a dirt-road village 25 miles north of Lilongwe, Mr. Sikayenera was sent here after he killed his elder brother Jonas. Their father, he said, gave him a choice tobacco plot that Jonas claimed was rightfully his. Jonas threatened to kill him if he did not surrender it. Lackson refused, he said, and Jonas attacked.

"To protect myself, I took a hoe handle and hit my brother on the forehead, and he fainted," he said. "Then I went to the police to report that I had harmed my brother." The police jailed him, then moved him to Maula Prison a week later.

That was more than 2,100 days ago.

"I have not seen my family since 1999," he said. "I was the only productive person in my home, and now there is too much poverty for them to afford transport to see me. The only communication I have gotten is from my first wife, who informed me, 'I am tired of staying alone here, and I am going to get married.' "

"Life is very hard here," he said.

He and the other men spend daytime in the prison yard, a field of thick yellow dust with an outdoor privy, a communal shower and one water spigot. At 4 p.m., they are herded into a dozen concrete cells. Fourteen hours later, at 6 a.m., they are let out again.

Their cells have iron-barred windows and thick walls to discourage escape attempts. A sporadically working shower and toilet are crammed in each cell's corner.

One cell wall is painted glossy black - a blackboard where inmates scrawl trivia like the cell's head count, prisoners' faiths and works of chalk art, like drawings of autos and dream homes.

Prisoners sleep on blankets on the floor, too tightly packed to reach the toilet - too packed, in fact, even to turn in their sleep. One inmate awakens the rest each night for mass turnovers. The most privileged inmates sleep on their backs, ringing the walls of the cell. Everyone else sleeps on his side.

"It is so unhygienic here," Mr. Sikayenera said. "Basically, if you need any source of water, you have to get it from the toilet. The showers, most of them are broken. There is a lot of dysentery. A lot of the time, the water isn't running." Maula Prison's commanding officer, an expansive man named Gibson Singo, disputes none of that.

"They were designed for 50 or 60 people in one cell," he said. "But now it's 150, 155. If you talk of human rights, there is no way you can put 150 people in one room."

Maula and four nearby prisons split a monthly state allotment of \$12,500, from which Mr. Singo must pay Maula's 124 employees and meet inmates' needs. Maula's share is laughably small. There are no prison uniforms, no blankets, no soap, save what charities provide. The only food is nsima, corn mush leavened with beans or meat from the prison rabbit hutch. The only drink is water.

The mush is boiled in massive tubs outside the prison, where wardens moved the kitchen after hungry inmates began fighting over the food. The old kitchen is now a rudimentary school, its lessons scrawled in chalk on the walls.

These conditions exact a cruel toll. Maula Prison lost an average of 30 prisoners a year in 2003 and 2004 - about one death per 60 inmates. The average for American prisons is one death per 330 inmates.

It could be worse: Zomba Prison, 100 miles south, loses one in 20 inmates annually. But it is bad enough.

## **How They Survive**

"It's just unbearable," said Frances Daka, 32, jailed on an unresolved murder charge since 2002. "We make ourselves live, just to survive."

Survive they do, in ingenious fashion. On each cell's wall, beside the chalk artwork, is a list of rules, laws that are both prosaic and telling: Do not make noise when the lights are off. Do not smoke during prayers.

Prisoners must be clothed, lest a bare body excite sex-starved men. "Sodomy is not allowed in this house," one rule states.

A cell hierarchy maintains order. A minister of health checks daily for sick prisoners and arranges medical care.

If justice outside the prison is slow to come, inside it is swift, lest unrest ensue. Cell policemen "arrest" rule breakers, and cell magistrates hear evidence and pronounce sentences.

"Let's say someone was helping himself while the others are eating," Mr. Sikayenera said. "This person might be given 500 days of cleaning the cell."

After 20 or so, the offender might be taken again to a cell judge, who can grant a reprieve.

"The reason why there is all this hierarchy is to find conflict resolution," Mr. Sikayenera said. "So there is no chaos. And it's effective. In most of the cells, you find there is no fighting. People don't break the rules."

Mr. Sikayenera is the magistrate of Cell 3. For six years, no one in Malawi's justice system has decided whether he should be punished or freed. But in prison, elevated by seniority and fellow inmates' respect, he metes out mercy and retribution with an even hand.

And without delay.

"When a case comes up," he said, utterly without irony, "it is dealt with. Right there."