

International Bar Association

Corruption and lack of justice in Malawi

A major report published on 13 August 2002 by the International Bar Association (the IBA) exposes how threats to freedom and justice have triggered off a chain reaction putting millions of people in Malawi under threat of famine. Extracts from the press release reads as follows:

“Faced with damning evidence of corruption and abuse, some leading international donor agencies have been compelled to withhold development aid, aggravating an impending humanitarian crisis which threatens to engulf one of the world’s poorest countries.

The urgent need to focus on good governance in order to restore the flow of funds is being jeopardised by interference in the independence of the justice system and the media, and by presidential efforts to find a way to stay in power for a third term, while the Constitution circumscribes a maximum of two.

The IBA’s report, the result of an investigative mission by a team of distinguished jurists from four continents, describes hearing evidence of threats and intimidation to independent-minded judges, lawyers and journalists, and black-listing of those who challenge the government.

The judicial system, chronically underfunded, is struggling to cope with a long backlog of cases, and cannot adequately serve rural areas which have almost no access to legal advice or representation. There are reports of random police round-ups without adequate evidence, as a result of which hundreds of people including children are getting lost in the prison system, and face indefinite incarceration. The inadequate number of qualified judges and lawyers in Malawi means that there is no short term prospect of redressing this crisis.

Attempts are being made to seek ways to extend the president’s power beyond its constitutional limit of two terms of office. A private member’s Bill seeking to achieve this was recently very narrowly defeated in parliament on 4 July 2002. There are now reports of new government action to make the necessary changes in the Constitution,

raising questions about its level of commitment to the multi-party democracy so recently achieved after the 30-year Banda rule ended in 1994.

President Muluzi needs to ensure that the democratic institutions set up in Malawi are not only protected but reinforced, and that the rule of law and adherence to the Constitution are put above the concerns of individual politicians or government officials.”

The IBA’s report sets out over 30 recommendations which it argues must be implemented urgently to stave off the worsening crisis. Among the key recommendations are:

- Any changes to the Malawi Constitution must be made strictly in accordance with the procedures set down in articles 196 and 197 of the Constitution – and the Constitution must be recognised by the executive as supreme.
- The executive is urged as a matter of priority to refrain from intimidating, and interfering with the independence of, judges, the legal fraternity and journalists.
- There must be a thorough and independent review and audit of the prison population.
- The government should ensure that the statutory mechanisms, including the Anti-Corruption Bureau and the office of the Ombudsman, are sufficiently resourced and funded and are free from executive influence.
- The government should ensure that it introduces sufficient auditing and accountability measures to make certain that, in future, funding for such projects is protected.

The investigative mission was organised by the Human Rights Institute (HRI) of the IBA, and funded by the Open Society Initiative for Southern Africa (OSISA) and the Foundation Open Society Institute. The full IBA report can be downloaded from the IBA website on <http://www.ibanet.org/pdf/MalawiReport1.pdf>

Background notes to the mission

The delegation members, listed below, came from diverse backgrounds and, between them, had a wealth of experience in varying jurisdictions.

- Bartram Brown, Professor of Law, Chicago-Kent College of Law, USA;
- Justice Ashok Desai, founding chief justice of Uttaranchal, India;

- Linda Dobbs QC, chair of the Professional Standards Committee of the Bar of England and Wales, and chair, Africa Project – International Relations Committee of the General Council of the Bar of England and Wales;
- Jonathan Lux, solicitor, England and Wales, and a partner in the firm of Ince & Co, council member of the IBA’s HRI;
- Sammy Modiba, assistant programme officer, Human Rights and Democracy Building, Open Society Initiative for Southern Africa;
- Maureen Tong, deputy director, Centre for Human Rights, University of Pretoria, South Africa.

Zimbabwe: Arrest and detention of a former judge

The International Bar Association (IBA) wrote to the attorney general of Zimbabwe, Andrew Chigovera, on 19 September 2002 to express grave concern about the arrest and detention of former Justice Fergie Blackie. A press release by the IBA reads as follows:

“The IBA has been advised that Chief Justice Chidayausiku reportedly ordered the Police Commissioner, Augustine Chihurover, to investigate the conduct of retired Justice Blackie in relation to a case involving a white woman convicted of stealing from her employer. Contrary to normal procedure, former Justice Blackie, who is 65 years of age, was arrested at 4 am on the morning of Friday, 13 September. No formal charges at the time of arrest and up until his release were put forward by the police. Sources advise that the allegations against Justice Blackie are without foundation. It is also, in our submission, wholly inappropriate that in a matter of this nature an elderly gentleman should be arrested at 4 am in the morning.

The IBA is extremely concerned to learn that Justice Blackie was denied access to legal representation for the first 32 hours following his arrest. The IBA is also alarmed at reports that Justice Blackie was denied medication necessary to control high blood pressure and that he was denied a phone call to his family and food during the first 32 hours he was detained. The IBA in its letter to Attorney General Chigovera, reminded the Zimbabwean government of its obligations under Article 5 of the African Charter on Human and Peoples Rights and Article 7 of the UN International Covenant on Civil and