

Malawi: Achuthan and Another (on behalf of Banda and Others) v Malawi (2000) AHRLR 144 (ACHPR 1995)

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Communications 64/92, 68/92 and 78/92, *Krischna Achuthan (on behalf of Aleke Banda), Amnesty International (on behalf of Orton and Vera Chirwa) v Malawi*

8th Annual Activity Report

(See also [Achuthan and Another \(on behalf of Banda and Others\) v Malawi](#) (ACHPR 1994))

Persecution of political dissidents

Life (extrajudicial executions, 6)

Torture (7)

Cruel, inhuman or degrading treatment (conditions of detention, 7)

Personal liberty and security (arbitrary arrest and detention, no legal remedies to challenge detention 8-10)

Fair trial (trial within reasonable time, defence - access to legal counsel, 9, 10)

State responsibility (change of government does not extinguish claim, 11, 12)

1. In communication no 64/92 Krishna Achuthan appealed to the Commission on behalf of his father-in-law, Aleke Banda, a prominent political figure who at the time of the communication had been imprisoned for over 12 years without legal charge or trial. Mr Achuthan had met with two successive heads of intelligence of Malawi who said there was no case pending against Mr Banda, but that he was being held 'at the pleasure of the Head of State'.

2. In communications nos 68/92 and 78/92 Amnesty International petitioned the Commission on behalf of Orton and Vera Chirwa. Orton Chirwa had been a prominent political figure in Malawi before independence, but had been living in exile in Zambia with his wife since 1964 because of differences with Malawi's President Banda. In 1981, the Malawi security officials took them into custody and they were subsequently sentenced to death for treason at a trial in the Southern Regional Traditional Court. They claimed at this trial that they had been abducted from Zambia. They were denied legal representation. The sentences were upheld by the National Traditional Appeals Court, although the Appeals Court criticised many aspects of the conduct of the trial.

3. After international protest, the sentences were commuted to life imprisonment. The Chirwas were held in almost complete solitary confinement, given extremely poor food, inadequate medical care, shackled for long periods of time within their cells and prevented from seeing each other for years.

4. In its supplemental communication consisting of a report on Malawi for March to July 1992, Amnesty International described the arrests of many office workers in 1992 because of suspicions that the equipment used in their work, such as computers and fax machines, could be used to disseminate the propaganda of the pro-democracy movement. The report also described extremely poor prison conditions, including overcrowding and torture consisting of beatings and electric shocks.

5. The communication also described the detention and intimidation of Roman Catholic bishops. Trade union leaders were imprisoned, and peacefully striking workers were shot and killed by the police. Police also raided student dormitories and arrested students who were beaten and tortured.

Law

6. Article 4 of the African Charter reads: '... Every human being shall be entitled to respect for his life...' Shootings by police officers are a violation of this right.

7. Article 5 of the African Charter provides as follows: '... All forms of ... torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.' The conditions of overcrowding and acts of beating and torture that took place in prisons in Malawi contravened this article. Aspects of the treatment of Vera and Orton Chirwa such as excessive solitary confinement, shackling within a cell, extremely poor quality food and denial of access to adequate medical care, were also in contravention of this article.

8. Article 6 of the African Charter reads: 'Every individual shall have the right to liberty and to the security of his person...' The massive and arbitrary arrests of office workers, trade unionists, Roman Catholic bishops and students violated this article. The arbitrary detention Mr Aleke Banda suffered is likewise a violation of article 6.

9. Mr Banda was not allowed recourse to the national courts to challenge the violation of his fundamental right to liberty as guaranteed by article 6 of the African Charter and the constitution of Malawi. Furthermore, Aleke Banda was detained indefinitely without trial. The Commission finds that Mr Banda's imprisonment violated article 7(1)(a) and (d) of the African Charter.

10. Vera and Orton Chirwa were tried before the Southern Region Traditional Court without being defended by a counsel. This constitutes a violation of article 7(1)(c) of the African Charter.

11. The Commission notes that Malawi has undergone important political change after the submission of the communications. Multiparty elections have been held, resulting in a new government. The Commission hopes that a new era of respect for the human rights of Malawi's citizens has begun.

12. Principles of international law stipulate, however, that a new government inherits the previous government's international obligations, including the responsibility for the previous government's mismanagement. The change of government in Malawi does not extinguish the present claim before the Commission. Although the present government of Malawi did not commit the human rights abuses complained of, it is responsible for the reparation of these abuses.

For these reasons, the Commission:

[13.] Holds that there has been a violation of articles 4, 5, 6, and 7(1)(a), (c) and (d) of the African Charter.