 COVER STORY

BROKEN JAILS
BROKEN JUSTICE

By [Author Name]
Thousands of prisoners across Africa wait years for their day in court, all the while living in unspeakably horrible conditions

By Michael Wines in Malawi

Since Nov. 10, 1999, Lackson Sikayenera has been incarcerated in Maula Prison in central Malawi. 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 runs rampant.

But the worst part may be that the charges against Sikayenera, who is accused of killing his brother, have not yet reached a court. Almost certainly, they never will. His case file is lost.

"Who took my file? Why do I suffer like this?" he asks.

This is life in Malawi's high-security prisons. Prosecutors, judges, even prison wardens agree that conditions are unbearable, confinements intolerably long, and justice scandalously uneven.

Most African governments spend little on justice, and what little is spent goes mostly to the police and courts, says Marie-Dominique Parent, the regional director of Penal Reform International, a British advocacy group. Prisons, she says, "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. The problem is, most people in African prisons aren't convicts. In the United States, the Sixth Amendment

guarantees anyone accused of a crime the right to a speedy trial, but across Africa, the lack of resources translates to long, inhumane waits before getting one's day in court.

The results are shocking: Two thirds of Uganda's 18,000 prison inmates have not been tried. The same is true of three quarters of Mozambique's prisoners, and four fifths of Cameroon's. Even in South Africa, Africa's most advanced nation, some inmates in Johannesburg Prison have waited seven years to see a judge.

**BADLY BROKEN SYSTEM**

It's a systematic failure of the judicial system, says Susan Rice, an Africa expert at the Brookings Institution, and it has ramifications beyond the thousands of people stuck in prisons. "It makes for a broader society in which fear has to play a fairly substantial role," she says. "If you can be arrested without cause and have no hope of ever seeing an attorney or seeing a day in court—even if it's inadvertent, it must undermine confidence in the state."

Indeed, some of Africa's million or so prisoners—nobody knows exactly 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 in 2004 that with proper legal representation, 20 percent of his nation's 55,000 prisoners might be declared innocent.

Meanwhile, across Africa, prison conditions are horrible. 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 eight years old. Kenyan prisoners die from easily curable ailments like diarrhea.

The most immediate and apparent inhumanity is the overcrowding that Africa's broken justice systems breed, compounded by disease, filth, abuse, and a lack of food, soap, beds, clothes, or recreation. Luzira Prison, Uganda's largest, holds 5,000 in a 1950s facility built for 600. Babati Prison in Tanzania, built for 50 inmates, houses almost 600.

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

**NO MONEY FOR TRIALS**

Paradoxically, the recent arrival of democracy in many countries after years of dictatorships has aggravated the problems of Africa's justice systems. 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 legal system remains badly broken. The country's 12 million citizens have 28 legal-aid attorneys and eight prosecutors with law degrees. That means almost all accused go to trial without lawyers.

"We get convictions that aren't supposed to be convictions, and acquittals that aren't supposed to be acquittals," says Justice Andrew Nyirenda, chief of Malawi's High Court.

The High Court must pass judgment on all homicides, but it has not heard a single case in the last year. There is no money to assemble lawyers, judges, and witnesses for hearings; no money to empanel juries as required since 1995; and no money to keep a written record.

Ishmael Wadi, Malawi's director of public prosecutions, says his eight prosecutors have a backlog of 173 untried
robery and theft cases, 388 fatal accident cases, and 867 homicide cases. And the caseload is rising. 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.

2,100 DAYS AGO

Built 40 years ago to house 800 inmates, Maula Prison now holds some 1,800 inmates. Sikayenera lives in Maula’s Cell 3, one of 160 men in a pen the size of a two-car garage.

Once a farmer, Sikayenera was sent here after he killed his elder brother Jonas. Their father, he says, 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 says, and Jonas attacked.

“To protect myself, I took a hoe handle and hit my brother on the forehead, and he fainted, he says. “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.

He and the other men spend daytime in the prison yard, a field of 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. Prisoners sleep on blankets on the floor, too tightly packed to reach the toilet—too packed, in fact, even to turn in their sleep (see cover photo).

“It is so unhygienic here,” Sikayenera says. “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 disputes none of that. They were designed for 50 or 60 people in one cell,” he says. “But now it’s 150, 155. If you talk of human rights, there is no way you can put 150 people in one room.”

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’s just unbearable,” says Frances Daka, 32, jailed on an unresolved murder charge since 2002. “We make ourselves live, just to survive.”

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