Human Rights Dialogues

Sahle

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Abstracts

In this conversation Ollen Mwalubunju discusses the politics of exile, the rise of Malawi's popular movement in the early 1990s and its legacies. Further, Mwalubunju discusses at length the struggle by civil society groups to deepen the democratic space that has emerged since the demise of the postcolonial authoritarian regime in 1994. Finally, Mwalubunju reflects on the tensions and complexity of his work as a social activist and the difficulties of promoting the respect and protection of human rights in the current global political and economic conjuncture. This conversation took place in January 2006.

Dialogos sobre derechos humanos.

Conversación con Ollen M.K. Mwalubunju

En esta conversación M discute las políticas del exilio, el origen del movimiento popular en Malawi en los primeros noventay su legado. Además M subraya las contradicciones y contribuciones de los grupos de sociedad civil en Malawi en su lucha por profundizar el espacio democrático que emerge desde el fin del

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1 Mwalubunju is a founding member of the Centre for Human Rights and Rehabilitation in Lilongwe, Malawi, an organization in which he has served as an Executive Director for ten years. This dialogue was carried out via telephone and email in January 2006. Eunice would like to thank Judith Blau for her encouragement during this process and for Ollen for taking the time from his extremely busy schedule to engage in this dialogue.

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The period 1990–1997 saw a significant number of Malawians return to the country after many years in exile. The years were also characterized by the rise of popular protest that played a major part in the demise of the postcolonial totalitarian regime. What made you decide to return from exile and what developments stand out for you from this period of intense popular struggle in Malawi?

Ollen:
To begin with, being a victim of human rights violations of the postcolonial one party regime forced me to leave the country. During my years in exile I devoted all my energies to politics with the main activity being opposing the repressive political system that existed in Malawi. Demands for an end to...
Human rights violations and for political change that would lead to democratic politics were central to my oppositional politics. During my exile years, I was part of a small group of Malawians who fearlessly exposed Dr. Hastings Kamuzu Banda’s regime gross violations of human rights. As such, in the early 1990s I was one of the founding members and was also nominated as the chief coordinator of the Malawi Exiled Human Rights Activists Group. The group’s representatives were drawn from various sectors of exiled Malawians that included scholars, students, youth, women, and men and professionals.

Among its activities, the group was very much involved in campaigning for the release of political prisoners that were held in Malawi’s notorious prisons such as Mikuyu without trial and the production of human rights literature exposing the horrendous human rights situation in Malawi. As part of its political efforts, the group also managed to produce a video that depicted the extent to which human rights were violated in the country titled: “Silencing the African Poet, Tears of Jack Mapanje.” The video was an attempt to highlight the plight of a scholar of international repute, Jack Mapanje, a leading Malawian poet, whom at the time was in detention without trial like so many innocent Malawians. In addition, the group mobilized Malawians and well wishers in the early 1990s and organized a protest match before the Paris Club Donor meetings of developed countries demanding that the Club suspend aid to Malawi given the gross abuse of human rights. Further, we urged that members of the Club put pressure on Banda’s regime to institute political reforms that would lead to democratic rule and use aid availability to such a development.

Further, the group worked in an underground manner with the Churches in Malawi and other religious leaders outside Malawi, to pressurize the Malawian authoritarian regime to institute democratic reforms and promote a human rights political culture. An important development in this regard was the Catholic Bishops decision to write, distribute and read the now famous 1992 pastoral letter that called for political, social and economic reforms to members of the Catholic community in Malawi. This development was followed by an overt and widespread popular protest that demanded political and economic reforms and truly galvanized the pro-democratic movement in the country. Participants in the popular protest emerged from diverse elements within Malawian societies: peasants, urban and rural workers, civil society groups, disgruntled members of the postcolonial ruling elites, intellectuals and so forth.
Having contributed towards bringing democratic changes while in exile, I decided to return home because I wanted to be part and parcel of taking part in the consolidation of the change that I and other progressive Malawians had tirelessly fought for in and outside the country for many years. In order for my contributions to be effective, I thought of forming an NGO with some of my fellow returnees. This idea led to the establishment of the Centre for Human Rights and Rehabilitation (CHRR) which now almost ten years later as you know is a household name in Malawian society due to work on promoting the protection and respect of human rights broadly defined.

*Eunice:*

When did you leave Malawi and under what circumstances?

*Ollen:*

I left Malawi in the mid-1980s because I was also involved in an underground movement aimed at bringing down the totalitarian regime headed by Dr. Banda. My work involved working closely with prominent political opponents to the regime in neighboring Tanzania and Zambia. I was very much involved in secretly smuggling anti-one party authoritarian literature into the country and was suspected by government’s spies who reported me to the police. I was tipped off of this development and knew that I had to leave before I was arrested. Given the political situation in Malawi since the 1964 Cabinet Crisis I knew I had no choice but to leave the country for fear of the consequence of being accused of smuggling subversive literature which was treasonable and carried capital punishment. I then fled to Tanzania as a political refugee and later traveled to the Former Soviet Union, Kenya and Uganda. Whilst in Uganda, I managed to get admitted at Makerere University where I studied for a Bachelor of Arts Degree in Political Science and Public Administration.

*Eunice:*

In specific terms what activities has the Centre for Human Rights and Rehabilitation been involved since its inception in the mid-1990s?

*Ollen:*

As I mentioned earlier, the founders of CHRR, most of who were themselves victims of human rights violations had devoted their time and energies in...
support of efforts to persuade the international community to stop supporting the authoritarian regime and to exert pressure on the regime especially on the issue of gross human rights violations. Upon returning home, following the introduction of multi-party democracy, in 1994, the group decided to redirect their political commitment, professional expertise and personal experiences to the consolidation of democracy and to the promotion and protection of human rights in Malawi. It was in the spirit of contributing towards building a Malawi with a solid foundation on democratic and human rights principles after seventy years of colonial and another thirty of postcolonial gross violation of human rights that we decided to establish the Center for Human Rights and Rehabilitation.

Since its inception the Centre has been involved in a number of activities which have included: education and training, human rights monitoring, research and documentation and advocacy among others. The activities are aimed at community mobilization and empowerment so that people are able to defend their rights from perpetrators and claim their rights from duty bearers. Provision of general civic (and during elections voter) education has been CHRR’s major activity. The organization has used multi-media strategies to deliver its civic education programs. These have comprised community-based group discussions, questions and answer sessions on selected topics, instructional and awareness-raising drama and song performances, together with poetry recitals. During such sessions we have distributed, posters, leaflets and pamphlets together with T-shirts bearing select topical messages on various aspects of human rights and democracy. CHRR has also used radio broadcasts to conduct civic education on a wider scale for instance, on the electoral process in connection with national elections and important constitutional matters and issues of community safety and so forth. In the area of research, the Centre has over the past years undertaken several research studies on a variety of subjects pertaining to democracy and human rights. Some of the findings from these research projects have shaped CHRR’s civic education programs and policy and legislative framework for the betterment of our fragile democracy. In view of its efforts in advocating for good governance, respect for human rights, and transparency and accountability from all those in positions of public trust or responsibility, CHRR has often been accused especially by state authorities of transgressing its limitations as an NGO. But our commitment and the sacrifices that many Malawians made in the struggle for the respect for human rights and democratic political
practices demands that we continue doing our work no matter what criticism is leveled against the Centre.

Reflecting on where we were almost ten years ago we are very happy with what the Center has contributed in Malawi in spheres of human rights. One of the most impressive achievements is the national structure that CHRR has established, given that it began with just a handful of persons. Through its radio and outreach program and other activities the center has established itself as a national site for all issues pertaining to human rights and democratic reforms. Most Malawians have internalized the core ideas of human rights discourse as evidence by an increased in the number of complaints to various human rights organizations including the Malawi Human Rights Commission and the complainants have mostly attributed to CHRR as their source of information to their action for redress. CHRR has also provided technical advice to the government and parliament on a number of human rights issues and in the process then influenced a number of policy reforms and decisions. In terms of its sustainability, CHRR now boasts of being one of the very few local civil society organizations that has acquired its own office premises.

Eunice:
In various works written about Malawian politics a consensus is emerging along the lines that civil society groups have played a major role in efforts to democratize the state and the promotion of human rights discourse. What are some of the struggles that civil society groups have been engaged since the early 1990s in efforts to deepen democratic political practices and the protection of human rights?

Ollen:
It is important to note that Malawi’s process of democratization started as a popular movement: a social protest against a totalitarian regime that failed to meet the expectations of its people for over thirty years after all the promises some of its key leaders had made during the nationalist struggle. One sometimes wonders if the leadership read Franz Fanon critique’s of nationalist movements in his book *Wretched of the Earth* and decided to provide a good empirical example. At any rate going back to your question, the struggle for a free society with an equitable socio-economic order was at the center of the calls for democracy by progressive elements in Malawi. Due to their popular orientation, the institutions of civil society acted as vanguard forums and...
avenues for nurturing, articulation and expression of these calls, which can be better understood by classifying them under five periods.

The first period 1989–1992 was characterized by the emergence of popular protest against the state and its economic order. International human rights organizations, unorganized mass labour and the student movements played an important role during this period. The second period 1992–1993 saw the emergence of the political movements pressuring for a multi-party regime. This can be called the transformation of public concerns into political protest. Religious institutions, political pressure groups, and the media, played a crucial role in harnessing this energy and steering the process. The third period was the period between the Referendum in 1993 and the General Elections in 1994, civil society organizations became heavily involved in the process of political transition. They engaged both the state and societal forces in a dialogue on the country’s political future, and acted as a conduit for grassroots articulation of political demands. They mobilized people in the struggle for drafting and adopting a new democratic Constitution that was put in place in 1994 and that led to the multi-party elections in the same year.

The fourth was the inter-election period 1994–1999, this period was characterized by the waning of political influence of civil society organizations. In this period, these organizations concentrated on highlighting the social and economic plight of the majority of Malawians and putting pressure on the state to acknowledge and address these issues in conjunction with groups in civil society. During the fifth period 1999–2004 civil society engagement with the state was characterized with increased tension and mistrust. It was the period when the state visibly intimidated members of civil society organisations especially those engaged in advocacy for good governance, human rights and respect for an independent media. The increased push for a deepening of democracy by these forces resulted in the state embarking on a campaign to silence them. Nevertheless, civil society groups continued to agitate for more democratic reforms and fundamental and progressive economic reforms. A major initiative by civil society organizations was a concerted effort to ensure a successful block on a Constitutional Amendment of the infamous third/open presidential amendment bill that would have led to the amending of the constitution a process that would have had serious implications for Malawian fragile democracy. The massive mobilization by groups in civil society greatly contributed to the defeat of the bill in Parliament. The bill intended to extend the tenure of presidential office beyond two terms of five
years each. It was also a period when the state enacted a repressive law, the NGOs law meant to control the activities of NGOs. Many have demonstrated resistance especially those in advocacy work.

The sixth period is the 2004 to date, which has seen civil society organizations pressuring the state to account for poor management of the electoral process which resulted in opposition political parties not accepting the outcome of the elections results in allegation of rigging; as such the legitimacy of the new state forces has been questionable to date. However, despite the legitimacy question, civil society groups seem to have accepted the new leadership in government because of its commitment to the principles of democratic reforms and transparency and accountability. The current political leadership has also shown some openness to engaging in a dialogue with groups in civil society. This is a new development in Malawian politics and civil society groups are hoping to utilize this opening to influence legislative and policy changes for the benefit of marginalized Malawians among other things.

Eunice:
You mention the struggle for the drafting, adoption and protection of a democratic constitution as being an important issue for civil society organizations such as the Centre for Human Rights and Rehabilitation in the period of the popular uprising and beyond. This seems to be the case for most politically engaged civil society groups not just in Malawi but in Kenya and elsewhere in Africa. What explains this phenomenon in the contemporary African political landscape?

Ollen:
Demands for political space and democratization, continued empowerment of people and the realization of human rights for the betterment of the society have led to increased pressure on governments by their people for constitutional reforms in Kenya, Malawi and elsewhere. The wind of change that was ushered in, due to the contradictions generated by the nature of postcolonial political economies, crisis of global capitalism, the end of Cold War geopolitics in the late 80s and external pressure for democratic reforms as a conditional for development loans resulted into popular uprising by social movements in a number of countries where there were undemocratic regimes. This was another wave of political liberation in the history of countries that were colonized by western powers such as Malawi hence the popular slogan in
the early 1990s: “the second independence.” History has it, that the pressures exerted on the colonial state by African anti-colonial struggles resulted in legal reforms in the 1940s and 1950s in most of the continent. These struggles were geared to political independence and social and economic betterment for local peoples and culminated in the formation of broader nationalist political movements that subsequently led to the dismantling of colonial empires in Malawi and elsewhere in Africa by the mid-1960s with the exception of former Portuguese colonies, apartheid ruled South Africa, Namibia and Zimbabwe.

The scope for political freedom did not improve though with transition to independence. In the context of Malawi a few months after independence the country experienced a major political struggle with the onset of the Cabinet Crisis. Following this crisis, Dr. Banda’s regime become increasingly suspicious of its own people and civil society organizations that were not linked to the ruling party the Malawi Congress Party were banned. These developments were not restricted to Malawi but were occurring in various parts of other developing countries given the context of Cold War geopolitics. Anyway as postcolonial elites embarked on a path to consolidate power the creation of repressive constitutions very similar to the colonial ones become a very useful political tool. It is important to remember that these efforts to consolidate power in one-party authoritarian regimes were eagerly supported by the scholarly literature and Western leaders in their doctrine of ‘developmental dictatorship states’ that claimed that these forms of political structures were vital instruments in the push for rapid economic development and social cohesion for countries in the so called early stages of development. All these developments led to the emergence of totalitarian regimes in various parts of the continent which resorted to and depended on violence and repression in order to keep the population in line and to prevent any form of self-organization. In its bid to keep a tight lid on the people, the Malawian state resorted to imposing very strict regulations and tight controls, thereby limiting the work of civil society that had emerged prior to independence and the immediate postcolonial period.

Following the momentous political changes of the late 1980s and early 1990s in Malawi, we saw numerous political reforms taking place the significant one being the transition from one party authoritarian rule to multi-party democracy, the internal and external political framework provided a new landscape for political organising, constitutional reforms, and continuous
pressure on African states to remain committed to the value of human rights that were enshrined in the new constitutions. For civil society groups in Malawi the adoption of a new democratic constitution was paramount after years of a repressive constitution that was drafted by state forces in the mid-1960s and adopted in 1966.

The adoption of a new Constitution founded on democratic principles and providing guarantees of human rights and freedoms has strengthened the work of civil society groups in a number of sectors including political advocacy. The rise of civil society groups in a number of countries including those in Malawi such as CHRR’s formation and its successful work can be attributed to the long struggle for constitutional reform. The Constitution guarantees have contributed in creating an environment that has been conducive in creating a political space for people to put their demands for increased political participation and leadership accountability in Malawi and other parts of Africa. But our work and struggle in the constitution arena is not done. In Malawi and elsewhere civil society and other progressive forces have to continue keeping a very close eye on constitution dynamics. As you know most states ignore core provisions of democratic constitutions and in other cases they use all sorts of tactics to delay the adoption and implementation of the newly crafted democratic constitutions.

Eunice:
From my very early days in Malawi I was surprised by the progressive bend of the country’s Constitution especially its robust definition of human rights that clearly endorses the centrality of promoting second and third generation human rights. What efforts have been made to promote these rights and other progressive elements embodied in the constitution?

Ollen:
In the fulfillment of the constitutional requirement, the state has established all the newly created constitutional human rights bodies involved in the promotion of human rights provisions as enshrined in the Constitution, such as the Malawi Human Rights Commission, the Office of the Ombudsman, the Malawi Electoral Commission among others. The state has also strengthened the judiciary which to a greater extent has operated independently in the interpretation of the Constitution and enforcement of human rights. Furthermore, the bill of rights contained under chapter 4 of the Constitution
is protected by the Constitution as it requires a referendum for its amendment other than Parliament’s 2/3 majority. This means that it can not be tampered with anyhow by political elites. Practically, the state has put in place a number of laws and policies to address the second and third generation human rights. For example, the state has put in place poverty reduction policies, decentralization policy, free primary school education policy among others. It has also been undertaking policy and law review processes. For example, the Malawi Law Commission is involved in law reviews so that they should be in conformity with the Constitution provisions and human rights standards.

On the part of civil society groups, they have been engaged in a number of efforts in bringing about awareness of human rights to citizens in all sectors of society and pushing for state’s adherence to its obligations of protection, promotion, respecting human rights. For example, these groups have been participating in the budget making process to ensure that adequate resources are put in place in order to ensure that second and third generations human rights are being addressed. Furthermore, a number of civil society groups have been involved in complementing the government’s efforts in the implementation of a number of policies such as in areas of education, health, environment, and economic empowerment of poor rural women and men among others.

_Eunice_: 

Of course the transition to democracy in Malawi has occurred in the context of a global political agenda that insists that countries in the global South establish multi-party politics as part of the good governance agenda. The latter and other policies embody neo-liberal political and economic reforms geared to countries in the global South. I am wondering what impact these developments have had on the struggle for democracy in Malawi?

_Ollen_: 

The wind of change ushered in the late 1980s, saw political reforms taking place in Malawi from one party to multi-party system of governance that led to the adoption of the new Constitution as alluded to earlier on. The change was brought due to global and internal political developments. The pressure from the lending community which demanded the implementation of good governance practices and respect for human rights as a condition for foreign development loans was very central to the process of political change as was
the rise of a local pro-democratic social movement. Malawi being one of the poorest countries in the world had to succumb to the demands by the donor community by adopting various liberalization policies both at the economic and political level. Dr. Banda’s regime was also losing local legitimacy due to the rise of a popular political movement.

With a new Constitution embracing human rights and a multi-party political system of government, Malawi has been part of the agenda of donors as a recipient for foreign aid support with an emphasis of support in the area of good governance and human rights. As such, since 1994 there have been a number of initiatives aimed at realizing human rights, the rule of law and good governance. But on the other hand, neo-liberal globalization has had an impingement on the promotion of human rights, for example, the privatization process has had adverse effect in that where companies have been sold, there has been massive retrenchment. Loss of jobs through policies of neo-liberal economic restructuring and other policies associated with these reforms have affected many families. Most people have had to find other means of economic survival a development that has led to all sorts of instability and tensions in our society.

Eunice:

In academic and civil society circles a distinction is usually made between states’ and civil society approaches to human rights practices. States’ in general are portrayed as being constraints to human rights practices while civil society groups are considered as vanguard promoters of the human rights broadly defined. You have worked in the civil society sphere for a long time but you were recently appointed by the State President as a Human Rights Commissioner for the Malawi Human Rights Commission. I am very interesting to hear how you perceive your new role especially given that you are still very much engaged as a social activist in your work at the Centre for Human Rights and Rehabilitation and other sites that are pushing for social justice in the country. What are the tensions, contradictions, etc, that have been generated by this development?

Ollen:

My new role at the Commission has been received with mixed feelings by the people. Some people have not welcomed it in that they fear that this is an attempt to silence me as someone who has been prominent in civil society.
advocacy work by fearless criticizing the state and its machinery in case of human rights abuses and undemocratic practices. The people therefore, are wondering as to whether, I will be able to strongly and independently voice fundamental political and economic concerns on behalf of the voiceless as I have done for many years. Another segment of society feels that I have betrayed them and that the move by the State is aimed at weakening civil society organizations involved in the struggle for social justice.

Indeed, there could be some validity in all these concerns, more especially in the area of my radically criticising the state in case of human rights violations given my position as an appointee of the state president, reporting to him, and being paid by state. As the saying goes, it might be difficult to point a finger at the hand that feeds oneself. So it is a difficult development. It is extremely difficult for someone like me coming from a very independent, fearless radical institution, joining an institution, which is so bureaucratic where certain decision are made by consensus with very limited room for different opinions on a diverse range of issues concerning human rights. The fact of the matter is that since my appointment to the Commission, I am having a very difficult time adjusting to this new role. I still believe in radical approaches to social, political and economic issues.

Profound as these challenges and tensions are though, I see my appointment not as a loss to civil society in that now, I am well placed to influence some policies within the state apparatus, as I am a link to civil society groups. The position also opens an opportunity for me to tap and utilize civil society’s skills and outreached capabilities to enhance the fulfillment of the constitutional mandate of the Commission. In addition, I also see it as an opportunity, to push through the positive agenda of civil society organizations in the realization of the principles of human rights as enshrined in the Malawi Constitution. The other most important aspect of this development is that the law is very clear in that it empowers the Commission to function independently of anyone and therefore, I will use this opportunity to serve the people of Malawi without fear or favor as an adherence to the oath of office that I took when I was sworn in. Should any person try to have any undue influence on me, I will not hesitate, if need be, I will resign rather betray the people of Malawi especially the marginalized members of our communities who struggle has inspired and informed my work for many years.
Eunice:

I will end our dialogue with another global political economy question if you don’t mind. In the context of the current phase of globalization what are the prospects and constraints of promoting and protecting human rights at the national and global level?

Ollen:

There are a number of prospects. To begin with, good governance and respect of human rights transcends national borders and to a large extend they are universally accepted norms. I know the arena of human rights is a much contested one but there has been a move over the last few decades towards acceptance of at least the basic agenda of human rights in most countries. With the advert of globalization and living in a global village, issues of human rights are becoming a concern of people of the world and they should be promoted and respected. For example, states which are party to various UN human rights treaties have an obligation to account to the international community through state party reporting on steps taken, achievement and challenge faced in meeting their obligation under various treaties in their respective countries. Those states that are grossly violating people’s rights as enshrined in the Universal Declaration of Human Rights and other treaties are put on spot to account for human rights abuses. Further, individuals that have committed gross abuses to their own people are not being spared. Rwanda and Yugoslavia UN Tribunals and the establishment of the UN International Criminal Court are cases in point.

Another prospect for promoting human rights in this phase of globalization process is the flow of information through new information technologies such as the internet. States now no matter how much they try do not have a monopoly on the flow of information. In case of human abuse, they are easily exposed to the world and brought to the attention of the world community. Access to information has tremendously improved the promotion and protection of human rights since various groups of people and individuals are able to easily share and source useful information in their social justice and other human rights struggles.

Whilst there are prospects of promoting human rights practices in the context of the current phase of globalization, there are significant constraints especially in the arenas of economic, social and culture rights. For example, due to the effect of globalization, most poor countries face major challenges
in exporting their products to the developed world and other large markets. This has been a central point in civil society struggle for reforms on the international trading system which has been unequal for centuries a factor that continues to limit economic development prospects for countries such as Malawi and other primary commodity producers in the periphery of the global system. Along these lines, while countries such as Malawi are continuously mandated to remove subsidies for their farmers, Western governments are not doing so as the cases of France and US indicate. These realities make it very difficult to implement and protect second and third generation human rights such as the right to economic development and so forth.

Further as I mentioned earlier on, the issue of privatization has also contributed to marginalization of people through retrenchment with many losing jobs and making impossible for them to support their families, a process that is contributing to major tensions in families resulting in the rise for instance in domestic violence, rapid increases in both rural and urban violence and overall a sense of social dislocation. Free market economic thinking that governs global neo-liberalism has also marginalized, most of the ‘Third world’ countries in that richer nations have flooded their markets with products, using these countries as a dumping ground. These developments have contributed to the stagnation of local industry development in developing countries among other things. To sum up, the core elements of neo-liberal globalization create opportunities for the promotion and protection of human rights, they also limit this process, especially the promotion of second and third generation human rights.
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