

Decorum or Deterrence? The Politics of Execution in Malawi, 1915-1966

Stacey Hynd (University of Oxford)

Capital punishment - and specifically public execution - is here investigated not simply as a judicial punishment, but as a lens through which to view the civil and socio-political development of Malawi, through the colonial to early independence eras. Most scholarship treats the death penalty as a mechanism of social control, or explains its evolution through discourses of 'civilisation'. This article focuses rather on the politics of capital punishment. Public executions in Malawi were an exceptional measure, employed at times of marked social and political unrest, being ordered by the colonial government in response to the Chilembwe Uprising in 1915, and by Prime Minister Banda in 1965 in the aftermath of the cabinet crisis and Chipembere Uprising. The continuities, as well as the changes, displayed in the practise and signification of these judicial killings, and the debates that surrounded them, highlight the tensions inherent in state rule between the 'process of civilisation' and 'good governance' both in domestic and international perspective, and the perceived necessity of 'violence' in maintaining control and order. Negotiations between Britain and the Malawian government surrounding the 1966 hanging of Medson Silombela - for murder during the Chipembere Uprising - reveal how international and domestic political considerations interacted with legal and moral arguments to shape the form of his execution, with the case becoming a symbol of race relations in Britain, and social order in Malawi.

In 1960, as part of its investigation into genocide and inhumane punishments, the United Nations sent a questionnaire to every member country inquiring about its policy on capital punishment. The Malawian government in its response stated confidently that: 'All executions are in private, and always have been since Nyasaland became a British Protectorate'.¹ They were mistaken. The question of public executions had arisen repeatedly since the establishment of Nyasaland in 1892, and subsequently in independent Malawi. Indeed, it became most controversial after Independence when in 1965 Prime Minister Hastings Banda amended legislation to allow the public execution

¹ National Archives of Malawi (NRA), AG 606 (UN Questionnaire on Capital Punishment 1967).
Address for correspondence: Faculty of History, University of Cambridge, West Road, Cambridge, CB3 9EF. Email sh562@cam.ac.uk.

of Medson Evans Silombela, a high-ranking rebel who had been convicted of murdering a Malawi Congress Party chairman during the revolt led by the former Education Minister, Henry Chipembere. Banda's public comments that 'I know that you will want to see him swinging from a pole. Whatever happens, his swinging must be public. I want him to dangle there until he breathes his last', made whilst the case was still *sub judice*, outraged the British media and international humanitarian sentiment.² *The Scotsman* described them as a 'reversion to primitive barbarity', damaging not only to Banda's reputation, but to the whole cause of African nationalism and race relations more generally.³ What was so controversial about allowing people to witness the execution of a 'self-confessed murderer', particularly considering the waves of violence and controversy erupting elsewhere in Africa?⁴ Executions had been a favourite form of citizenship lessons and entertainment for the masses across history, particularly in England, until the mid-nineteenth century. At that time, a combination of changing cultural sensibilities and politico-legal strategies re-created the public execution as a symbol of barbarity and a site of scandal in many western nations, with public executions being abolished in Britain in 1868.⁵ To understand the controversy behind public executions it is necessary to address both the changing meaning and performance of capital punishment in Malawi, and the tensions between governments and public opinion – domestic and international – from the early colonial to the Independence era.

*
* *

The death penalty should not be seen simply as a judicial punishment, but as a lens through which to view social and civil development. Most scholarship focuses on capital punishment as a mechanism of social control, or seeks to explain its evolution through

² Cited in *The Malawi Times*, 3 November 1965, *Daily Telegraph*, *The Times*, and *The Guardian*, 4 November 1965.

³ National Records and Archives (NRA) London, DO 183/702 (Capital Punishment – Death Sentences and Executions, Malawi 1965); *The Scotsman*, 1 December 1965. See also Commonwealth Relations Office [hereafter CRO] to British High Commission [hereafter BHC], Zomba, 25 November 1965; J. Grimond to A. Bottomley, 6 December 1965).

⁴ NRA, DO 183/702 (O. Forster to J. Rednall, 2 November 1965).

⁵ V. A. C. Gattrell, *The Hanging Tree: Execution and the English People, 1770-1868* (Oxford, 1994); R. McGowen, 'Civilising Punishment: The End of Public Execution in England', *Journal of British Studies*, 33 (1994), 257-82.

discourses of ‘civilisation’.⁶ Whilst these approaches are illuminating, this article rather emphasizes the political nature of capital punishment and how it relates to a wider field of social defence – to the establishment of social cohesion, and the strategies of violence employed by states to assist this.⁷ There has been relatively little historical study of capital punishment in Africa, although there is a growing debate on punishment and colonial penalty in the continent.⁸ As David Anderson suggests ‘State execution is a mighty weapon, and in the colonial context it has generally been used sparingly’.⁹ Why is this? Capital punishment, like flogging, was a violent punishment antithetical to civilized sensibilities and seen as ‘simultaneously humane, necessary and a problem’ by many colonial officials.¹⁰ It reflected the contradictions inherent in colonial modes of governance, particularly as – unlike other legal penalties – it had an expressly political element. The final decision in any execution lay not with a judge, but with the governor, and, after independence, with the Prime Minister of a territory. Looking at the political nature of the death penalty entails investigating for what reason, and in what manner, executions were carried out. What meanings and signs were intended by an execution, and how were these received by different audiences? The interaction of evolving ideas about ‘civilisation’ and ‘violence’ are crucial in this regard.¹¹ Notions of punishment in Africa were intimately linked to concepts of ‘civilisation’, ‘justice’ and ‘good governance’ in the colonial period, but also to the necessity of violence in the control and operation of the state.¹² The question is, at what point did the humanity and ‘decorum’ required by ‘civilisation’ give way to the violence necessary for ‘deterrence’, and vice-versa?

⁶ See M. Foucault, *Surveiller et Punir: Naissance de la Prison* (Paris, 1975); D. Hay, P. Linebaugh, J. C. Rule, E. P. Thompson & C. Winslow, *Albion’s Fatal Tree: Crime and Society in Eighteenth Century England* (London, 1975); P. Spierenburg, *A Spectacle of Suffering: Executions and the Evolution of Repression from a Pre-Industrial Metropolis to the European Experience* (Cambridge, 1984).

⁷ See M. Meranze, ‘Michel Foucault, the Death Penalty and the Crisis of Historical Understanding’, *Historical Reflections*, 29, 2 (2002), pp. 191-209.

⁸ The two main studies are Anderson, *Histories of the Hanged*, and R. Turrell, *White Mercy: A Study of the Death Penalty in South Africa* (Westport, 2004).

⁹ Anderson, *Histories of the Hanged*, p. 6.

¹⁰ S. Pierce, ‘Punishment and the Political Body: Flogging and Colonialism in Northern Nigeria’, in A. Rao & S. Pierce (eds.), *Discipline and the Other Body: Correction, Corporeality, Colonialism* (Duke, 2006), pp. 187-9.

¹¹ See N. Elias, *The Civilising Process: The History of Manners and State Formation and Civilization*, trans. E. Jephcott, (Oxford, 1994) and Foucault, *Surveiller et Punir*.

¹² See F. Bernault (ed.), *Enfermement, Prison et Châtiments en Afrique: Du 19^e Siècle à Nos Jours* (Paris, 1999).

The real issue of capital punishment in this context is not the violence used, but the form which it takes and the extent to which this impinges upon public sensibilities.¹³ An execution is a complex interaction of discourses of deterrence, retribution, law and control, underlining the state's power to punish and reinforcing its claim to a monopoly of violence.¹⁴ The colonial period saw an evolution in the practise and rituals of capital punishment, as it was transformed from a public symbol of British power to a sanitized judicial murder. Methods of execution were based on British models but reflected evolving sensibilities and structures of government in colonial territories. During early colonization executions were normally carried out by firing squads, but in Nyasaland hangings had been preferred almost from the outset. They were proposed as the most 'humane and decorous manner' of execution.¹⁵ With the development of state and legal structures, hangings evolved from simply consisting of a rope thrown over a tree to becoming the culmination of a long process of sentencing and appeal, sanitized and routinized affairs conducted on specially constructed gallows and following strict British procedures, with the condemned man bound and his head covered to save the colonial officers from viewing his dying breaths. However, in practise, as many hangings were carried out on temporary scaffolds by inexperienced district officers, sometimes lacking the proper ropes and equipment, they were often neither humane, efficient nor 'decorous', and judicial and administrative officers frequently expressed concern about such mishandled deaths. The practise of holding hangings in district prisons was abolished in 1924 after the badly botched execution of two Africans, Jim and Makoshonga, left one to be hanged twice and the other shot in the head after being taken down whilst still alive.¹⁶ This tension between the power implied by the ritual of execution and its often *ad hoc* manifestation is a good analogy for the colonial state itself.

It was the ritual and ceremony of a hanging however that remained crucial to conveying the death penalty's message of British power, order and the necessity of obeying the law. Execution procedures in Nyasaland were reformed according to the

¹³ D. Garland, *Punishment and Modern Society: A Study in Social Theory* (Oxford, 1990), p. 243.

¹⁴ J. McGuire, "'Judicial Execution and the Civilizing Process": Race and the Transition from Public to Private Executions in Colonial Executions', *Australian Historical Journal*, 29 (1998), p. 209.

¹⁵ M. Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge, 1985), p.71.

¹⁶ NAM, S1/2664/23 (Murder Trial – R v Jim and Makoshonga).

dictates of ‘civilisation’, but also in order to legitimate the continued application of the physical violence viewed as necessary for control. The centralization of executions in British Africa between the 1920s and 1930s was supposed to ensure that hangings were carried out in the ‘humane’ and ‘efficient’ method required by English procedures, but it also significantly altered their meaning and reception by privatizing the event. In Nyasaland, prior to centralization, executions had been attended by all adult male witnesses from the murder trial and members of the condemned man’s village in order to maximise the deterrent impact. This combined the visually symbolic deterrent effect, deemed necessary to imprint British power and law on African minds, alongside concordance with English law, constituting what is best described as a ‘semi-private’ system of execution.¹⁷ But, for many British colonial officials in Africa, public executions were increasingly regarded as ‘barbaric’, ‘inhumane’ and ‘uncivilised’.¹⁸ The Colonial Office categorically refused to accept public executions – namely those carried out close to the condemned man’s home or the scene of the crime, and before local witnesses. It deemed such events as ‘opposed to the ordinary dictates of humanity’, and condemned any case brought to its attention, as in Kenya (1907, 1923), Oron, Nigeria (1919), and Hoima in Uganda (1932).¹⁹ The fact that there was no rebuke for the colonial government in Zomba, Nyasaland’s capital city, indicates that London was probably unaware of its use of African witnesses. Changing attitudes among officials in Nyasaland meant that, after 1924, the practise of ordering African witnesses to view hangings was rejected as ‘contrary to all principles of decency and decorum’.²⁰ The reform of executions in Nyasaland however, as across Africa, was neither linear nor uncontested. Public executions were illegal under British law, but in Africa the strictures of the law were often ignored, and in times of social unrest many colonial governments reverted to exemplary public hangings to demonstrate British power and shore up their authority.

¹⁷ McGuire, “Judicial Execution”, pp. 187-209.

¹⁸ C. Clifton Roberts, *Tangled Justice: Some reasons for a Policy of Change in Africa* (London, 1937), pp. 87-8. Executions in Britain were conducted in private on specially constructed long-drop gallows, with only the professional executioner, prison officials and a religious minister in attendance. Hangings in Africa were supposed to follow these Home Office procedures, but many lacked the facilities and used semi-private executions.

¹⁹ NRA, CO 536/172/14 (Public Executions- Uganda 1932); CO 533/295 (Kenya 1923 June Despatches).

²⁰ NAM, 4-4-8R 2952 (Procedures to be followed in murder cases in Nyasaland, 1924-59, Chief Justice Thomas, February 1940).

During the Chilembwe Uprising in Nyasaland in 1915, the death sentence was passed on forty-six men, thirty-six actually being executed.²¹ To increase the deterrent effect some of these men were hanged on the main Mlanje road near a station where a government *askari* (soldier or policeman) was killed, and others were executed by a firing squad rather than wait for portable gallows to be constructed.²²

*
* *

Methods of execution were as bound up in the politics of colonial and African society, in social defence and race relations, as they were with changing sensibilities towards the public infliction of pain upon the body of the criminal.²³ After Independence, it was the aftermath of the Chipembere Uprising in 1965 that re-awoke the controversy of public execution in Malawi. Medson Evans Silombela was convicted in November 1965 of the murder of Ali John Mbawa, the Malawi Congress Party Chairman of Nyambi, Kasupe District. Silombela was a fifty-year-old former garage mechanic, held by Banda's government to have been a lieutenant to Henry Chipembere, the former Education Minister. Whilst in the run-up to Independence, Dr Banda had seemed supreme in his position as the leader of Nyasaland's people, a mere seven weeks after Independence on 6 July 1964, the underlying conflicts within the Banda government over the President's increasingly dictatorial style of rule erupted in a 'ministers' revolt'.²⁴ Led by Henry Chipembere, once the man who helped establish Banda as Malawi's messianic first President but now Banda's greatest enemy, by October the political crisis had unfolded into violence as government forces sought to hunt down the rebels and their supporters, before erupting in February as Chipembere launched a failed coup d'état. Wide popular support and dogged resistance by Chipembere's followers in Malindi district escalated the conflict before government forces gained the upper hand and Chipembere was forced to flee to safety in America (with Banda's tacit support) and the uprising petered out. The ministers' revolt, although a relatively modest event in itself, became a seminal event in Malawi's history. Banda's suppression of the opposition led not only to the decimation of

²¹ NAM, S1/496/19 (Sir George Smith, 'The Empire at War: Nyasaland', p. 8).

²² NAM, J5/12/11 (Murder and Manslaughter Cases 1915-16).

²³ McGuire, "Judicial Violence", p. 209.

²⁴ See C. Baker, *Revolt of the Ministers: The Malawi Cabinet Crisis, 1964-65* (London, 2001) for an excellent in-depth analysis.

the political leadership, but thousands of people were forced into exile for up to thirty years. Families were split, and hundreds – if not thousands – of Banda’s opponents were herded into detention camps and brutally treated. Hopes for a democratic transition of power were dashed, whilst the tensions inherent in Malawian society exploded into public and international view, leading Britain to question its support of Banda.²⁵ After Silombela’s capture in November, Prime Minister Banda asserted repeatedly that he wanted everyone to see Silombela hang, and then implemented legislative change to allow this to occur. Both British and international humanitarian observers were outraged. Editorials in the British press questioned Banda’s actions:

How could Dr Banda, the contemporary realist, the sophisticated admirer of the traditional values of the British Commonwealth and the monarchy, lend himself to a deliberate reversion to primitive barbarity? Why should he give such ammunition to the enemies of African nationalism? ... Is Dr Banda pandering for expediency, but with personal distaste, to the more primitive appetites of his people? Or does he genuinely believe ... that justice must not only be done, but be seen to be done, by people who will trust only the evidence of their own eyes?²⁶

Britain was in a morally and politically ambivalent position in relation to the use of capital punishment in Africa. As a colonial power she had long utilised the death penalty, receiving particular criticism during the Malayan, Cyprus and Mau Mau Emergencies.²⁷ However, less than a week after Banda’s ‘see Silombela swing’ comments, on 9 November, the British Parliament passed the Murder (Abolition of the Death Penalty) Act, which suspended capital punishment for murder, following a prolonged domestic campaign.²⁸ The British government had also campaigned against the mandatory death sentences passed under the Law and Order (Maintenance) Act in Southern Rhodesia between 1962 and 65.²⁹ As a result, both the international community and British public expected the government to intervene in Silombela’s case. However, the government was in the difficult position of being held responsible for a situation over which it had no real

²⁵ J. McCracken, “‘Setting the Record Straight’? Transition in Malawi”, *Journal of Southern African Studies* 29 (2003), 791-3.

²⁶ NRA, DO 183/702 (*The Scotsman*, 1 December 1965).

²⁷ See A.W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention on Human Rights* (Oxford, 2001); Anderson, *Histories of the Hanged*.

²⁸ B. J. Christoph, *Capital Punishment and British Politics, 1945-57* (London, 1962), p. 342.

²⁹ NRA, DO 183/485 (Death Sentences for Petrol Bombing in Southern Rhodesia [Mapolisa File] 1963-65); CO 1032/464 (Prerogative of Mercy, 1963-65).

legal or constitutional power. Despite Britain retaining a residual prerogative of mercy in former colonies, it was against practise and procedure for either the colonial secretary or the Queen to intervene in decisions of execution or commutation.³⁰ Only the governor could exercise mercy, but as Malawi was an independent country governor-general Sir Glyn Jones could only follow the prime minister's advice, and Banda was not about to grant Silombela a reprieve. Jones found himself powerless to deny Banda's wishes, although he informed the colonial office that he personally found the idea of public executions repugnant.³¹ Jones could not resign as his good personal relations with Banda were crucial for securing his support against Southern Rhodesia in the aftermath of the Universal Declaration of Independence on 11 November 1965, which had seen Ian Smith's Rhodesian Front government repudiate British overrule in order to retain white minority rule, as Britain refused to grant independence until majority rule by Southern Rhodesia's African population had been allowed.³² Rhodesian 'independence' became Britain's most severe and damaging colonial crisis. The idea of using British aid as a bargaining tool was rejected as it was felt too serious to break with Banda, a necessary ally against Rhodesia and deemed an otherwise moderate, anti-Communist African leader, 'merely because after a fair trial a multi-murderer is to be hung in public rather than in prison'.³³ The British government was also placed in an ambivalent position because it had unobtrusively supported Chipembere and secured his escape to America, via Southern Rhodesia, after the uprising had failed.³⁴ But what really restricted Britain's moral leverage was the fact that Banda and his supporters adopted the very arguments and discourses of deterrence that the colonial government had used previously to justify its own public and semi-public executions, although they deployed a more forceful rhetoric stemming from a desire for retribution rather than order.

Banda received wide backing for his position during the Parliamentary debate on 10 November 1965 regarding the Penal Code (Amendment) Bill to allow public execution, with African ministers being vociferous and lurid in their support. Minister A. W. Mawambungu, himself wounded in a rebel raid, declared: 'If I had any power myself,

³⁰ NRA, DO 183/702 (Confidential Memo, Public Executions).

³¹ *Ibid.*, (Governor-General Jones, Zomba to CRO, 17 November 1965).

³² NRA, DO 183/702 (Jones to Private Secretary, Buckingham Palace).

³³ *Ibid.*, (BHC Zomba to CRO, 1 November 1965).

³⁴ Baker, *Revolt of the Ministers*, pp. 237-73.

these people would not even be tried. They would just be hanged dead in a public place like the Central stadium. I wish they were not to be hanged too quickly. It is easy to burn the toes somehow'.³⁵ Minister E. Banda, from the Ministry of Community and Social Development, proclaimed: 'Before they are dead they should be skinned as rabbits so that their skins should be used as carpets. We should send them to our Malawi museum'.³⁶ Other speakers gave Biblical and customary precedents for public killings. Even the European Opposition Leader, Michael Blackwood gave his tentative support to the Bill:

I have tried to picture what would be the position in England, say, if they had suffered a rebellion, and raiders had come down from the Welsh mountains into the local villages, killing, burning, looting and so on...I am far from certain that there would not be cries of "string 'em up". I am not by any means certain that what has been suggested is not right in the circumstances which exist in Malawi.³⁷

Most disturbingly for the British, Home Affairs Minister Richard Chidzanja stated: 'It is a repetition of the history of what the British did in this country'.³⁸ And he was largely right. Banda himself asserted that the British had no right to criticise his decision, as they themselves had employed public executions recently during Mau Mau and in Sierra Leone, accusations that the colonial office confidently denied, while frantically sending officials out to check if they were true.³⁹ The fact that they did not know is a perfect illustration of London's *ad hoc* approach to colonial justice. In fact, Glyn Jones confirmed that 'public executions have been carried out in certain parts of British Africa since I joined the Colonial Service in 1931'.⁴⁰ In 1965 Banda argued for re-introducing public execution as follows:

It was essential that as many people as wanted should actually see a dangerous criminal such as Silombela die...The deterrent effect on other potential murderers and traitors: this was a very important consideration...⁴¹

³⁵ Hansard Malawi, 3rd Session, 10 November 1965, 252.

³⁶ Ibid, 256.

³⁷ Ibid, 256-60.

³⁸ Ibid, 257.

³⁹ NRA, DO 183/702 (CRO to J. Nicholas, BHC Zomba, 17 November 1965).

⁴⁰ Ibid., (Jones to CRO, 17 November 1965).

⁴¹ Rhodes House Library, Oxford MSS.Afr.s.1794 (20) (Sir Glyn Jones Papers- Nyasaland 1960-66, Note by Jones of a meeting with Banda, 5 November 1965), cited by Baker, *Revolt of the Ministers*, 265.

He railed against British hypocrisy, stating: ‘You can’t judge others by your own standards, because your own standards were built up under different circumstances from those under which we live now’. This was the very argument of African exceptionalism that colonial officials had themselves used to justify public or semi-private executions, articulated now from a belief in the speaker’s political and ethnic predominance rather than racism.⁴²

Investigations by the British High Commission in Zomba appeared to confirm general support for Silombela’s execution. Although the opinion of ordinary Africans is hard to gauge, the argument in *The Malawi News* that ‘[u]nder our own laws before the British came, if a man killed your relative, you had the right to take a knob-kerry, shield and spear and kill that man without a fuss’ was probably reflective of many people’s attitudes.⁴³ Strong calls were made by both government officials and sections of the public to hold the execution at either Silombela’s village or the central stadium in Blantyre to enhance deterrence and to ‘dispel current beliefs that he had either not been captured or was immune to death at human hands’. The British high commissioner argued that educated Africans ‘whilst they would not themselves make a point of watching the execution...do not doubt its virtue as a cathartic for the feelings of the people, particularly those who have directly suffered from the depredations of Silombela’.⁴⁴ It should be noted however, that the official report submitted to assist the decision on mercy stated that local opinion in Silombela’s home village was against the death sentence as he was the only remaining son of an elderly mother.⁴⁵ Among the white population there was a general feeling that Banda had found an African answer to an African problem. Many, and particularly those who remembered British public executions, held that Africans needed to see justice done, otherwise they would believe the convicted man had ‘turned into a hyena’ or been ‘sent to work in the mines in South Africa’.⁴⁶ They accepted Banda’s political strategy and knowledge of his people, and

⁴² Hansard Malawi, 3rd Session, 10 November 1965, 250.

⁴³ NRA, DO 183/702 (*The Malawi News*, ‘Freedom of Expression Our Birthright- Rebels Must be Hung’, 12 November 1965).

⁴⁴ NRA, DO 183/702 (R. Bloom, BHC Zomba to M McMullen CRO, 15 December 1965).

⁴⁵ NAM, 11-15-1F 185.92 (Medson Evans Silombela v Regina, Prerogative of Mercy Report, 3 January 1966).

⁴⁶ *Ibid.*

only a minority feared this measure would ‘breed more violence and lessen the value of human life’.⁴⁷

Sensibilities may change and become more ‘civilised’, but these alterations are not total or unilinear. Certain forms of violence remain legitimate under certain circumstances, particularly for social defence in times of unrest. The support from Malawian ministers and the general public for public execution is not an indication that they were more ‘blood-thirsty’ or ‘primitive’ than other peoples, but rather that they perceived their social order to be under threat, and were able to draw on pre-existing discourses and collective memories of punishment in order to re-establish internal security. Although the prosecution and media depicted Silombela as a monster, he was made an example of not as a murderer – his crime was not exceptional in form or level of violence – but as a rebel, as a threat to the government and its social order.⁴⁸

Despite the suspension in 1965 of capital punishment for murder in Britain, and campaigns against Southern Rhodesia’s use of mandatory death sentences, what British officials both in London and Zomba opposed was not the execution itself, but simply its public nature.⁴⁹ Although the colonial government had employed public and semi-private executions in Nyasaland, there had also been a considerable tradition of mercy in its deployment of the death penalty and an emphasis on ‘justice’ and a ‘fair trial’. It was this conflicting inheritance that formed the background to the Silombela case. During the trial Silombela’s supporters had protested that public discussion of the case prejudiced his chances of a fair trial. Allegations were made that police brutality had been used to extract a confession from Silombela, but both the presiding judge, Justice Cram, and the appeal judge, Chief Justice Southworth, stressed that his trial had been fair and that there was no ‘doubt at all that the appellant is guilty of a deliberate and cold blooded murder.’⁵⁰

Governor-General Jones, reporting on a petition for mercy sent to the Queen, emphasised that:

⁴⁷ NRA, DO 183/702 (*The Scotsman*, 1 December 1965).

⁴⁸ NAM, 11-15-1F 185.92 (Draft Commentary by Governor-General on Document entitled ‘Petition to the Queen’s Most Gracious Majesty concerning one Medson Silombela charged with Murder’, 18 November 1965).

⁴⁹ See Great Britain, Murder (Abolition of the Death Penalty) Act 1965 and NRA, DO 207/282; DO 207/299; DO 183/485; CO 1032/464.

⁵⁰ NAM, 11-15-1F 185.92 (Chief Justice Southworth, 22 December 1965).

Silombela is deserving of no sympathy; in a confession produced at trial he admitted to eight murders. Nevertheless, he has been accorded all the advantages which the British system of justice confers upon a person accused of crime. Contrary to the allegations of the Petitioners he will not be subject to any inhuman or degrading punishment for the offence of which he has been found guilty.⁵¹

Petitioning the Queen was a deliberate tactic of Silombela's defence, aimed to raise international awareness of his plight. In appropriating British discourses in which 'justice' and the 'rule of law' were two of the fundamental boons granted to Africans by colonial rule, they appealed to Britain to fulfil its role of guarantor of these principles within the Commonwealth.

In response to such appeals, British officials stressed repeatedly that the matter was exclusively of concern to the Malawian government. The high commissioner wrote: 'it is not for the British Government to disapprove the public execution as such', but he also noted that Banda should not underestimate public opinion on the matter in Britain, or the spectre of negative international opinion. In Britain itself, however, the government sought to restrict public knowledge of Silombela's plight. The high commissioner feared that the execution might damage race relations, and he warned that 'any example of African barbarism at this stage would add grist to the Rhodesian mill'.⁵² When liberal party leader Jo Grimond, a frequent anti-colonial campaigner, enquired 'whether it would be in the public interest to put down a question in the House [of Commons] on this matter', the Secretary of State for Commonwealth Relations, Arthur Bottomley, dissuaded him from doing so.⁵³ Part of the difficulty faced by officials was that although they were negotiating the grounds of a particular legal case, Silombela's conviction could not be treated in isolation from wider events and sentiments.⁵⁴ Unlike the Malawian government which stressed Silombela's position as a rebel leader, British officials were apt to regard him as 'a pathological case'.⁵⁵ One telegram from the British High Commission in Zomba stated that:

⁵¹ Ibid, (Governor-General Jones, 25 January 1966).

⁵² NRA, DO 208/21 (High Commissioner Cole to CRO, 21 January 1966).

⁵³ NRA, DO 183/702 (Confidential Memo – Public Executions).

⁵⁴ Officials were also keen to prevent discussion of the case by MP's in the House of Commons as it was technically still *sub judice*.

⁵⁵ Ibid, (Roberts, BHC Zomba to CRO, 29 October 1965).

[I]n many places Silombela would have been tortured and disappeared; is it then a “barbarity” to try and execute him? Indeed in a world where the most appalling atrocities are taking place daily, Banda will no doubt claim that we are being unduly sensitive, and perhaps prejudiced by current feeling against all capital punishment in Britain.⁵⁶

Both the international community and African leaders put further pressure on Banda. The case was raised in the United Nations, and petitions were sent from Zambia to the Queen by former Minister Gray Fundi and five hundred other Malawian exiles.⁵⁷ Kwame Nkrumah, President of Ghana and Banda’s long-standing friend, wrote asking him to reprieve Silombela ‘purely on humanitarian grounds’. This plea was repeated by the Ghanaian High Commissioner to Malawi during an audience with Banda. Banda refused to back down, arguing:

The inhabitants of Fort Johnston District are predominantly Muslims and their belief in absurdities is profound. During the uprising in Malawi, Mr Chipembere ... had, through his agents managed to propagate the idea that he and his army commanders had medicine that made them invisible... I want to give them a practical demonstration that Chipembere and his henchmen are not superhuman beings.

The Commissioner reported to Nkrumah that he found Banda’s insistence on public execution ‘disquieting’. ‘This will be a horrible execution’, he wrote.⁵⁸ The Malawian security forces had already hanged one man from a mango tree in Fort Johnston District, mistakenly believing him to be Silombela.⁵⁹

Private negotiations between the British High Commission and Banda’s government in Zomba were Britain’s main method of exerting pressure on Malawi. The policy seemed to be working when Banda stated in a fraught meeting with Attorney-General Roberts that ‘[p]erhaps we might have a public hanging in prison’, only to renege the next day.⁶⁰ British officials stressed repeatedly the damaging impact of adverse international opinion on Malawi, and the fact that erecting the proper gallows

⁵⁶ Ibid, (BHC Zomba to CRO, 1 November 1965).

⁵⁷ Ibid, (Lusaka to CRO, 22 December 1965).

⁵⁸ 1993 York University Papers on the Malawi Cabinet Crisis 1964-65, (Letter K Nkrumah to H Banda, 10 January 1966; Memorandum Owusu to K Nkrumah, 19 January 1966), cited in C. Baker, *Revolt of the Ministers*, pp. 263-4.

⁵⁹ Baker, *Revolt of the Ministers*, p. 262.

⁶⁰ NRA, DO 183/702 (Roberts to CRO, 6 November, 1965).

outside of prison would take some two days work, giving the media and public ample forewarning of the event, and allowing uncontrollable levels of crowds and interest to generate. Perhaps it was the suggestion by two of his Ministers, Richard Chidzanja and Gomile Kumtumanji, that no such preparation was required since ‘it was only necessary to string Silombela up from a tree’, that really made Banda question the legitimacy and impact of his decision.⁶¹

The execution negotiations revealed much about attitudes towards public and state violence and about the importance of ‘justice’ to state legitimacy. Britain’s first priority in these negotiations was to ensure a humane execution: meaning a properly constructed scaffold and the employment of the Rhodesian professional executioner, Mr Catchpole. However, Banda insisted that if Catchpole ‘set it up’, African prison officials could complete the job. It was to be a Malawian, not a European, hand that exacted justice. In the end, Catchpole conducted the execution but was screened from the audience, who only saw his African assistant. The second priority for Britain was that ‘law and order’ had to be maintained. The crowd was to be controlled, by police force if necessary, and any attempt to desecrate the body was to be prevented. Britain’s official third priority, but the first conceded by Malawi in negotiations, was the non-involvement of any British officer. Britain could not be seen as in anyway condoning the execution, even if privately her officers had come to accept it as expedient.⁶²

Under British and international pressure, Banda conceded to Roberts’s suggestions and accepted that the execution be held in Zomba prison with only 400 to 450 witnesses.⁶³ These included victim’s relatives and many from Silombela’s village, who were not informed beforehand they would witness the execution in order to limit press awareness and prevent large crowds from gathering. Witnesses were merely told to gather at Zomba airfield, ostensibly to hear a speech by Banda. They were then collected in army trucks and driven to the site, which must have been unnerving for many.⁶⁴

⁶¹ NRA, DO 208/21 (Cole to CRO, 24 January 1966).

⁶² NRA, DO 183/702 (BHC Zomba to CRO, undated).

⁶³ See NRA, DO 208/21 and DO 183/702.

⁶⁴ NRA, DO 208/21 (Defence Advisor to BHC Zomba, 2 February 1966 and Cole to CRO, 3 February 1966). The execution was reported by *The Malawi News*, *The Times*, *Guardian* and *The Sun* on 2 February 1966.

Although maximum deterrence was sought through public exposure, the event was to be tightly controlled. Journalists were refused admission to the site, no photos were allowed, and the police were given authority to smash any cameras found. In addition, the gallows were screened off by corrugated iron, with the condemned men dropping out of sight as the trap opened.⁶⁵ When Silombela went to his death at 7 a.m., 1 February 1966, what was used was a system of semi-public execution, very similar to that employed by the colonial government decades earlier. The didactic symbolism of public execution was prioritized, reassuring the people that their government was doing its duty in punishing rebels and protecting order, but concepts of ‘civilised’ and ‘humane’ governance were not ignored; deterrence would have to co-exist, if uneasily, with decorum.

*

**

The death of one man, as a murderer and a rebel, became a symbol around which Banda’s government attempted to re-establish social order and authority, whilst Britain attempted to defend its reputation as the seat of ‘justice’ for former colonies against its increasingly contentious political position in Southern and Central Africa. The negotiations over Silombela’s execution were played out against the background of the Rhodesian crisis, and to a lesser extent, the abolition of capital punishment in Britain; the hanging of an African was seen by Britain as a race relations issue rather than relating to the general morality of the death penalty. The story of capital punishment in colonial and independent Malawi highlights the continuities in strategies of order and political control. The death penalty remained the supreme habitus of a state’s power over its recalcitrant subjects, but that power was never total, being refracted through the lens of race and restricted by the states’ own need for legitimacy constituted through its subjects, and overseen by international opinion. The uneasy relationship between government and its right to kill would appear to be borne out in the Malawian archival and official memory of Silombela’s hanging, with only one incomplete trial record to be found in the Zomba archives. The meaning and practise of execution in Malawi was dictated not just by attitudes towards crime, order, violence and the infliction of pain, but by the politics of state rule, be it in colonial or African hands.

⁶⁵ NRA, DO 183/702 (Confidential Telegram BHC Zomba to CRO, 27 December 1965).