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PROCEDURES SPECIALES DU
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UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers.

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1 May 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 16/4, 16/5, and 17/2.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning judicial harassment against **Mr. John Kapito**, Chairperson of the Malawi Human Rights Commission (MHRC).

According to the information received:

Mr. Kapito was approached by a group of approximately 30 police officers as he was coming out of the Crossroads Hotel in Lilongwe on 17 March 2012. The police were reportedly looking for guns and seditious materials, and after questioning Mr. Kapito they proceeded to search his car. It is reported that Mr. Kapito also explained to the police that he was carrying foreign currency due to his forthcoming trip to Geneva

Despite not having found any guns or materials in his car, the police took Mr. Kapito to a remote police station where he was interrogated. Mr. Kapito asked for his legal counsel to be present, but the police reportedly did not take any action to this effect. It is reported that Mr. Kapito was asked about his presence at a meeting of civil society actors which had taken place the weekend before, during which the participants had called for a referendum and the resignation of the President at the time. Mr. Kapito reportedly told the police that he did not attend this meeting. The police reportedly also asked Mr. Kapito what materials he would be taking to Geneva on his forthcoming trip to present to the International Criminal Court (ICC) and what reports he would present to the ICC. Mr. Kapito

allegedly explained that he was not going to a meeting of the International Criminal Court but the International Coordinating Committee of National Human Rights Institutions, which goes by the same acronym (ICC) and of which the Malawi Human Rights Commission is an accredited member.

It is reported that the police decided to search Mr. Kapito's house the same day, but no seditious materials were found. However, Mr. Kapito was charged with possession of seditious materials and possession of foreign currency. He was granted bail and was able to travel to Geneva to attend the ICC meeting. Upon his return to Malawi, he has reportedly been scheduled to appear before the court twice, on 30 March 2012 and 12 April 2012, but the case was not heard on any of these occasions, reportedly because the police are yet to open a file on the case. The case is now scheduled to be heard before the court on 15 May 2012. It is reported that the charge of possession of foreign currency has been dropped after the bank provided documentation to the police that the funds were obtained legally. The charge of possession of seditious materials is still in effect and is reportedly still being investigated by the police.

It is alleged that this case is emblematic of a broader pattern of prosecution of human rights defenders in Malawi in relation to the exercise of their legitimate activities, and that the use of sedition charges is applied frequently to limit the right of human rights defenders to freedom of expression.

Concern is expressed that the charges against Mr. Kapito and the continued deferral of his case may be linked to his legitimate work in defence of human rights. Concern is further expressed that this case is part of a broader campaign to silence human rights defenders in Malawi and limit their right to freedom of expression.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would like also to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that article 19, paragraph 3 of the ICCPR provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression

of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6, point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- article 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

Based on the information received, while we do not believe that Mr. Kapito should be prosecuted in relation to the exercise of his legitimate activities as a human rights defender, we wish to underline that his right to a fair trial and all guarantees thereof should be respected in accordance with article 14 of the ICCPR. In this regard, the courts must ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected in accordance with principle 6 of the Basic Principles on the Independence of the Judiciary (endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985). Finally, we wish to stress that principle 2 of the aforementioned instrument requires courts to "decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Kapito are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopts effective measures to prevent the recurrence of these acts.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the cases accurate?
2. Has a complaint been lodged by or on behalf of Mr. Kapito?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the above-mentioned cases.
4. Please provide information concerning the legal grounds for the charges brought against Mr. Kapito, and how these measures and the judicial proceedings against him are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
5. Please indicate what measures have been taken to ensure that the legitimate right to defend human rights peacefully is guaranteed and respected.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Frank La Rue
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers