

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders**

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)  
MWI 4/2011

10 October 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/4, 15/21 and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning an alleged campaign against opponents of the Government, in particular the arrest of **Mr. Black Moses**, arson attacks at the offices of the non-governmental organisation **Institute for Policy Interaction (IPI)** and the home of human rights defender **Rev MacDonald Sembereka**, and an attack on the home of Mr. **Peter Chinoko**.

Mr. Black Moses is a student and President of the Youth for Freedom and Democracy, a student political pressure group the campus of the University of Malawi.

IPI is a non-profit, non-religious and non-partisan institution which was formed in 2001 to promote participation by all citizens in the processes of social, economic, and political decision-making at all levels, within a fully participatory democratic framework. Its director, Mr. Rafiq Hajat is convenor of the Southern Region Demonstration Group and one of the leading figures of the civil society coalition behind the recent pro-reform protests.

Rev. MacDonald Sembereka is the national coordinator of the Human Rights Consultative Committee (HRCC). The HRCC is a network of 91 local civil society and

non-governmental organisations that work to protect human rights, to promote good governance and to contribute to national development by fostering a culture of transparency and accountability. He is also the executive director of the Malawi Network of Religious Leaders Living with HIV/AIDS.

On 28 March 2011, an urgent appeal was sent to your Excellency's Government, on behalf of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders. The communication addressed the general situation of human rights defenders in Malawi over the early course of 2011 as well the death threats against and the harassment of human rights defender and executive director of the Centre for Human Rights and Rehabilitation (CHRR) Mr. Undule Mwakasungula. The communication also referred to information received regarding the existence of an alleged ongoing campaign against human rights defenders.

We received a response to this communication transmitted by your Excellency's Government on 11 August 2011 acknowledging receipt of the communication and stating that your Government will submit a response to the allegations contained therein in due course. We look forward to receiving this response.

Mr. Peter Chinoko is a human rights activist who works at the Catholic Commission for Justice and Peace (CCJP).

Mr. Chinoko was the subject of a communication sent to your Excellency's Government on the 5 August 2011 by the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights.

We received a response to this communication transmitted by your Excellency's Government on 9 August 2011 acknowledging receipt of the communication and stating that your Government will submit a response to the allegations contained therein in due course. We look forward to receiving this response.

According to the new information received:

On 3 September 2011, at approximately 1:00 a.m., a petrol bomb was reportedly thrown into the front room of IPI offices in the Chichiri area of Blantyre and the building caught fire. Sensitive files and documents relating to the work of IPI were allegedly destroyed in the fire and it is reported that the total damage caused is estimated at millions of Kwacha (1 million MKW= €4, 647 approximately).

Whether IPI watchmen helped the perpetrators is not yet clear as their whereabouts allegedly remain unknown. Police have reportedly confirmed that an investigation has been opened into the arson attack.

It is reported that at a press conference held that afternoon, the IPI and other civil society organisations linked the attack to hostile statements made publicly by Government authorities, which may have encouraged government supports to target human rights defenders and civil society.

When Government authorities were asked about the attack by the media, a spokesperson of the ruling Democratic Progressive Party reportedly stated that the Government had received information that led it to believe that NGOs were purposely burning down their own offices in order to destroy evidence of misuse of funds.

On 10 September 2011, at approximately 6:00 p.m., it is reported that an unidentified man, aged around 20, arrived at the home of Rev. MacDonald Sembereka in Balaka. The unidentified person allegedly asked Rev. Sembereka's family member, who was at home at the time, to confirm whether the house belonged to the Reverend. The individual reportedly stated that he had travelled from Andiamo to carry out construction work on a fence surrounding the property.

It is reported, that at approximately midnight that night, Rev. Sembraka's family member noticed smoke inside and realised that the house was on fire. Reportedly, neighbours attempted to put out the fire but were unable to do so and the house was destroyed in the blaze. An empty petrol can was reportedly found near the house and the police have opened an investigation into the arson attack. According to information received no arrests have yet been made. It is further alleged that other human rights organisations have been also torched and subjected to different forms of harassment and violence.

On 20 September 2011, it is reported that the home of Mr. Black Moses was raided by police and he was arrested and taken to an unknown location where it is alleged that he is being interrogated in relation to a recent publication criticising the President.

On 25 September 2011, at approximately 7:00 p.m., it is reported that some fifteen individuals armed with machetes and one with a gun stormed into the yard of Mr. Peter Chinoko. According to information received, Mr. Chinoko and his family rushed into the house to safety at which point the perpetrators tried to break into the home of the human rights defender but failed to do so.

These incidents reportedly come in the context of an increase in physical attacks, threats and intimidation against human rights defenders engaged in pro-reform protests in Malawi. It is alleged that, mass protests were organised on a country wide scale on 20 July 2011 and remain ongoing.

The President has reportedly made inflammatory remarks against civil society leaders involved in these mass protests. On 25 August 2011, it is alleged, that the President publicly stated that he was ready “for war” with his critics.

Concern was expressed in the former urgent appeal sent on 28 March 2011 regarding the general situation of human rights defenders in Malawi, taking into account the existence of a reported smear campaign allegedly orchestrated by the Government against human rights defenders. Finally, concern was expressed at allegations that restrictions had been placed on human rights defenders’ legitimate right to organize peacefully protest, and threats that the Government is prepared to use any means necessary to crush opposition to its leadership.

Further concern is now expressed regarding the physical and psychological security of Mr. Black Moses following his arrest, particularly in light of the fact that his whereabouts remain unknown. Further concern is now expressed regarding the physical and psychological security of members of IPI, Rev MacDonal Semberoka and Mr. Peter Chinoko, given the recent attacks to which they have been subjected. Serious concern is now expressed that the aforementioned incidents may be directly linked to the legitimate and peaceful work in defence of human rights and in particular their work in advocating for reforms as well as the exercise of their right to freedom of expression and assembly. Further concern is expressed for the safety of human rights defenders in Malawi in the context of the ongoing threats and intimidation to which some of them have been subjected in recent months.

Without expressing at this stage an opinion on the facts of this case and on whether the detention of Mr. Black Moses is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (‘UDHR’) and articles 9 and 14 of the International Covenant on Civil and Political Rights (‘ICCPR’).

Furthermore, while we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency’s attention to the right to physical and mental integrity of Messrs. Black Moses, Rev. MacDonal Semberoka, Peter Chinoko, as well as of the members of the non-governmental organisation IPI.

We would also like 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, 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.”

In this connection, we would like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of association with others,".

We would also 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 5, points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.

- 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.

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Messrs. Black Moses, Rev. MacDonald Sembereka, Peter Chinoko, as well as of the members of IPI are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Messrs. Black Moses, Rev. MacDonald Sembereka, Peter Chinoko, as well as of the members of IPI in compliance with the above international instruments.

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, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of these cases accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please provide information regarding the legal basis for the arrest and ongoing detention of Mr. Black Moses, as well as details about the location where he is currently detained. Please explain how these measures are compatible with international human rights norms and standards contained, inter alia, in the ICCPR, the UDHR and the Declaration on human rights defenders.
6. Please clarify whether compensation has been made available to IPI, Rev MacDonald Sembereka, Mr. Peter Chinoko or their families?

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

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

El Hadji Malick Sow  
Chair-Rapporteur of the Working Group on Arbitrary Detention

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

Maina Kiai  
Special Rapporteur on the rights to freedom of peaceful assembly and of  
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Margaret Sekaggya  
Special Rapporteur on the situation of human rights defenders