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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; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the independence of judges and lawyers; the 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) G/SO 214 (3-3-16) G/SO 214 (53-24)
MWI 6/2011

19 October 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 17/2, 16/4, 15/21, 16/5, 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the arrest and detention of Messrs. **Billy Mayaya, Ben Chiza Mkandawire, Brian Nyasulu, Comfort Chitseko, and Ms. Habiba Rezwana Osman.**

Messrs. Mayaya, Mkandawire, Nyasulu are members of Forum for the Defence of Democracy.

Ms. Osman is a lawyer of the Norwegian Church Aid, a non-governmental organization, in Lilongwe, Malawi.

Mr. Billy Mayaya was the subject of an urgent appeal sent 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 defenders on 5 August 2011, concerning the excessive use of force in the context of peaceful anti-Government protests in Malawi. We received a response to this communication transmitted by your Excellency's Government dated 9 August 2011 acknowledging receipt of the communication and stating that your Government will submit its response in due course. We look forward to receiving this response from your Excellency's Government.

On 11 October 2011, an urgent appeal was sent to your Excellency's Government, by 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 on human rights defenders concerning an alleged campaign against opponents of the Government. We received a response to this communication transmitted by your Excellency's Government on 17 October 2011 informing that a commission of inquiry has been set up to investigate the alleged campaign against opponents of the Government and stating that your Government will share the outcome and findings of the commission with the Office of the High Commissioner for Human Rights. We look forward to receiving such information from your Excellency's Government in due course.

According to the information received:

On 14 October 2011, Messrs. Mayaya, Mkandawire, Nyasulu, Chitseko, and Ms. Osman were arrested at around 13:40 p.m. after making a public statement in front of the parliament building in the city centre of Lilongwe. According to the source, in their statement, the individuals urged the President to hold a referendum calling for an early election. They also called for the resignation of Police Inspector General, Mr. Peter Mukhito, and an investigation into his role in the recent death of a student from the University of Malawi, Mr. Robert Chasowa.

It is reported that Messrs. Mayaya, Chitseko, and Ms. Osman are currently detained at the Lumbazi police station. Mr. Nyasulu is detained at the area 18 police station. Mr. Mkandawire is detained at the Kanengo police station.

According to the source, Messrs. Mayaya, Mkandawire, Nyasulu, Chitseko, and Ms. Osman have been charged with holding an illegal demonstration outside the Malawian parliament.

Reportedly, Ms. Osman has been denied access to a lawyer. Messrs. Mayaya, Mkandawire, Nyasulu, Chitseko, and Ms. Osman have been denied bail. Mr. Nyasulu has been denied access to medical treatment while in detention. After their arrest, the security services allegedly searched their homes.

Concern is expressed that the arrest and detention of Messrs. Mayaya, Mkandawire, Nyasulu, Chitseko, and Ms. Osman may be directly related to their work in

defence of human rights and the legitimate exercise of their right to freedom of opinion and expression. Concern is expressed regarding the physical and psychological security of Messrs. Mayaya, Mkandawire, Nyasulu, Chitseko, and Ms. Osman. Concern is further expressed that Ms. Osman is at risk of torture or other cruel, inhuman or degrading treatment or punishment.

Without expressing at this stage an opinion on the facts of the cases and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their 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).

In this connection, we would 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 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 also like to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the ICCPR, which provides that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others."

Concerning the allegation that Ms. Osman has been denied access to a lawyer since her arrest on 14 October, we wish to stress that everyone should be granted prompt access to a lawyer. In this regard, we refer to principle 7 of the Basic Principles on the Role of Lawyers (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990) which stipulates that "Governments shall ... ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention."

In this regard, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, the ICCPR, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

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 9, para. 1 which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

- 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. Billy Mayaya, Ben Chiza Mkandawire, Brian Nyasulu, Comfort Chitseko, and Ms. Habiba Rezwana Osman 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 the above-mentioned person(s) 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 the case accurate?
2. Please provide full details of the legal basis for the arrest and subsequent detention of Messrs. Billy Mayaya, Ben Chiza Mkandawire, Brian Nyasulu, Comfort Chitseko, and Ms. Habiba Rezwana Osman.
3. In connection with the above, please explain how the arrest and detention Messrs. Billy Mayaya, Ben Chiza Mkandawire, Brian Nyasulu, Comfort Chitseko, and Ms. Habiba Rezwana Osman are compatible with international norms and standards as stated, inter alia, in the UDHR, the ICCPR, and the Declaration on human rights defenders. Please further indicate whether Ms. Osman has been granted access to a lawyer.
4. Please provide details of any protective measures put in place to guarantee the physical and psychological integrity of Messrs. Billy Mayaya, Ben Chiza Mkandawire, Brian Nyasulu, Comfort Chitseko, and Ms. Habiba Rezwana Osman.

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

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

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

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers