

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 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

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (107-9)
MWI 1/2011

28 March 2011

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 7/36, and 7/8.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the situation of **Mr. Undule Mwakasungula**. Mr. Mwakasungula is the Executive Director of the Centre for Human Rights and Rehabilitation (CHRR), a Malawian NGO which was established in 1995 with the objective of promoting good governance within the framework of international human rights instruments and Malawi's national constitution.

We would further like to bring to your Excellency's Government's attention the **general situation of human rights defenders in Malawi**.

According to the information received:

Case of Mr. Undule Mwakasungula:

On 20 March 2011, Mr. Mwakasungula received death threats via telephone from unknown individuals. It is alleged that first caller accused Mr. Mwakasungula of trying to tarnish the Government's image and undermine the work and role of President Bingu wa Mutharika. The caller reportedly told Mr. Mwakasungula that he would be dealt with using whatever means necessary. During the second phone call, it is alleged that the caller threatened to kill Mr. Mwakasungula and urged him to exercise caution. The caller made reference to the manner in which Mr. Mwakasungula carried out his human rights work claiming that the underlying objective of his work was to influence the outcome of Presidential elections set to take place in 2014.

It is reported that on 9 March 2011, armed police officers visited Mr. Mwakasungula's home in Karonga. It is alleged that the police officers claimed this was a routine check.

According to the information received, on 3 March 2011, at approximately 2:30 a.m., a group of unidentified individuals broke into the CHRR offices in Lilongwe. They were allegedly in possession of machetes, knives and petrol. It is reported that nothing was stolen during the break-in; however the unidentified individuals demanded that the security guard on duty provide them with Mr. Mwakasungula's home address. It is reported that the security guard told the group of individuals that he did not know Mr. Mwakasungula's home address. The security guard was allegedly severely beaten by the group of individuals and abandoned near Area 18 Roundabout. The incident was later reported to police at Area Lingadzi police station.

General situation of human rights defenders in Malawi:

It is reported that the death threats against Mr. Mwakasungula, as well as the break-in at the CHRR offices form part of an ongoing campaign against human rights defenders in Malawi. It appears that the campaign against civil society has intensified in recent weeks, as the Government reportedly began a public campaign of intimidation against human rights defenders in a bid to prevent public demonstrations demanding reforms. It is alleged that Government officials have publicly stated that they are prepared to utilise any means necessary in order to quell the climate of discontent.

On 14 February 2011, police in Lilongwe City banned a peaceful march organised by civil society.

On 23 February 2011, civil society groups issued a public statement condemning the recent wave of intimidation against them. It is reported that following the issuance of such a statement, the Human Rights Consultative Committee, a coalition of 90 organisations, received a letter signed by the National Youth Forum threatening to close down the coalition.

On 6 March 2011, President Bingu wa Mutharika held a rally in Blantyre in order to demonstrate in relation to the high level of support which exists for the ruling Democratic Progressive Party. President Bingu wa Mutharika allegedly called on those present to support the Government and to fight those who opposed the views of the Government. It is alleged that President Bingu wa Mutharika announced that anyone wishing to organise a public protest would be required to seek permission, which would be subject to payment of a deposit of 2 million Kwacha, (13,000 USD).

On 7 March 2011, top Government officials again reiterated the sentiment of the President, that those opposing the President would be silenced by any means necessary.

It is further reported that the President recently made comments regarding a group of human rights defenders who presented a statement at the 16th session of the UN Human Rights Council in Geneva. It is alleged that the President stated that “there is a group of 15 people roaming in Europe saying that there is a violation of human rights because we don’t allow university professors to teach revolution... We are waiting for them to come back and to tell us what their agenda is”. A local newspaper reportedly published an article alluding to the possibility that UN aid to Malawi may be cut if human rights defenders continue “irresponsible reporting” to the Human Rights Council. Some Malawian newspapers, which are allegedly controlled by the State, reportedly criticised human rights defenders for what they perceived as a presentation on behalf of the human rights defenders with the objective of reporting the President to the UN Special Rapporteur on the situation of human rights defenders.

Serious concern is expressed for the physical and psychological integrity of Mr. Mwakasungula considering the death threats issues against him in recent days. Concern is also expressed that the situation of Mr. Mwakasungula, as well as the break-in of CHRR offices, may be linked to the legitimate work of the organization in the defence of human rights.

Further concern is expressed regarding the general situation of human rights defenders in Malawi, taking into account the existence of a reported smear campaign against human rights defenders, which is allegedly orchestrated by the Government. In this connection, concern is expressed at allegations that restrictions have been placed on human rights defenders’ legitimate right to organise peacefully protest, and threats that the Government is prepared to use any means necessary to crush opposition to its leadership. Further concern is finally expressed regarding alleged comments made by President Bingu wa Mutharika regarding a group of human rights defenders who have recently engaged with UN mechanisms in Geneva.

While we do not wish to prejudge the accuracy of these allegations, 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 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.”

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 International Covenant on Civil and Political Rights, 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.”

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, point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully;

- 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

- 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.

Finally, we wish to recall the provisions of resolution 12/2 of the Human Rights Council (A/HRC/RES/12/2), which, inter alia, “condemns all acts of intimidation or reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (OP 2) and “calls upon all States to ensure adequate protection from intimidation or reprisals for individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (...)” (OP 3).

We urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Mwakasungula 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 Mr. Mwakasungula 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 details of protective measures that have been made available to Mr. Mwakasungula in order to ensure his physical and psychological integrity considering the content of the threats against him. If no protection measures have been put in place, kindly clarify the reasons for this.
3. Please provide the details, and where available the results of any investigation carried out with regard to death threats against Mr. Mwakasungula. Kindly clarify the reasons why police officers visited the home of Mr. Mwakasungula.
4. Please provide details, and where available the results of any investigation carried out with regard to the break-in at the offices of CHRR, as well as the violent assault of the security guard who was present at the time. If no inquiries have taken place, or if they have been inconclusive, please explain why.

5. With regard to the issues raised in questions 3 and 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?
6. Regarding the broader situation for human rights defenders in Malawi, kindly clarify whether allegations that the Government has publicly called for the use of all measures necessary in order to crush opposition are true.
7. Regarding comments allegedly made by President Bingu wa Mutharika pertaining to 1) the payment of a deposit of 2 million Kwacha to hold a public protest, and 2) a group of human rights defenders who recently engaged with the UN Human Rights Council, kindly clarify whether these comments are true.
8. With regard to the issues raised in questions 6 and 7, if these comments are true, please indicate how they are compatible with international human rights norms and standards as contained, inter alia, in the International Covenant on Civil and Political Rights and the Declaration on Human Rights Defenders.

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.

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