

**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 extrajudicial, summary or arbitrary executions; 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 Special Rapporteur on the situation of human rights defenders.**

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (33-27)  
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 17/5, 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the **excessive use of force in the context of peaceful anti-Government protests in Malawi, which resulted in at least 18 deaths and a large number of injured.**

According to the information received:

On 20 July 2011, nationwide peaceful demonstrations were organized by civil society organizations to highlight grievances related to economic governance, human rights abuses, constitutional amendments aimed at limiting human rights and foreign policy relations.

Prior to the demonstrations, in the afternoon of 19 July 2011, youth wing members belonging to the ruling Democratic Progressive Party drove around the city of Blantyre, brandishing machetes and intimidating people to stay away from the demonstrations. They were chanting that "any person who opposes the Government will not sleep and will be dealt with severely". The police allegedly did not take any action to stop them. Further, Government officials including the Minister of Information and the Presidential Spokesperson addressed several

press conferences calling on Malawians not to support the “pro gay demonstrations”.

In the morning of 20 July 2011, the High Court granted an injunction restraining the demonstration from proceeding, ultimately vacated by civil society in the afternoon. While the injunction was still in place, the police started to violently disperse the demonstrators who had gone ahead despite the court order. Violent clashes were then reported in the cities of Lilongwe, Karonga and Mzuzu. It is alleged that security forces fired live bullets and teargas at the protestors. It is alleged that most police officers were carrying guns and did not possess other non-violent weapons. We are informed that during the clashes there was rioting and destruction of property by certain groups.

During the clashes, about 18 people were reportedly killed and many others injured, including children. We have received information on the following victims: Mr. **Samson Nguluwe**, aged 22, from Perekamoyo Village, TA Ntwalo in Mzimba; Mr. **Jacob Nyangali**, aged 24, from Engalaweni in Mzimba; Mr. **Chimwemwe Ngwira**, aged 21, from Chingoti village, T/A Ntwalo in Mzimba; Mr. **King Musukwa**, aged 38, from Mabuli village, T/A M’bwana in Nkhata Bay; Mr. **Charles Chibambo**, aged 33, from Ekwendeni; Mr. **Julika Kaunda**, aged 38, from Joshua village, T/A Mabulabo in Mzimba; Mr. **Abel Kanyenda**, aged 19; and Mr. **Aaron Chitenje**. We are informed that to date, the Government has not taken any substantive measures to investigate the deaths that occurred during the demonstrations.

It is alleged that during the demonstrations, the police arrested and beat up several human rights defenders and journalists. Their main targets were reportedly Mr. **Undule Mwakasungula**; Mr. **Billy Mayaya**; Ms. **Nancy Tembo**; and Mr. **Peter Chinoko**. Others sustained serious injuries including Mr. **Isaac Kambwiri**, a journalist working for *Capital FM radio* and Mr. **Amos Gumulira**, a photojournalist working for *the Nation Newspaper*. They both sustained severe head injuries.

On the day of the demonstrations, the Malawi Communications Regulatory Authority (MACRA) issued a gag order to *Malawi Institute of Journalism FM*, *Zodiak Broadcasting Station*, *Capital FM* and *Joy Radio* stopping them from live broadcasting on progress of the demonstrations. On 21 July 2011, *Malawi Institute of Journalism FM*, *Capital FM* and *Joy Radio* were reportedly taken off air by MACRA for undisclosed reasons for a period of five hours.

We are informed that the President of the Republic of Malawi issued a warning at a public rally to the organizers of the demonstrations, mentioning them by name, saying “I will hunt for you everywhere. Even if you try to hide in some hole, I will smoke you out. I will smoke you out wherever you are because you have no right to destroy the peace and tranquility of this country.” He accused them of

trying to overthrow the Government. Reportedly after the speech some human rights defenders have gone into hiding for fear of their lives.

Currently, some human rights defenders are reportedly being threatened by unidentifiable persons. We are informed that Mr. **Benedicto Kondowe**, the Executive Director of the Civil Society Coalition on Quality Basic Education, received an anonymous call. He was asked why he was opposing the President and why civil society organizations are exposing the shortfalls of the Government. He allegedly received the call after an interview that was broadcast on the *Malawi Institute of Journalism radio*, in which he talked about the violent repression of civil society members that participated in the demonstrations.

We would like to express our serious concern at the reported excessive use of force by the police during the clashes, which resulted in 18 deaths and injuries among protestors, including children. We are further concerned that human rights defenders and journalists are being targeted to prevent them from carrying out their legitimate work in defense of human rights and fundamental freedoms.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's Government's attention to relevant obligations international principles and norms governing the use of force by law enforcement authorities. Articles 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which the Republic of Malawi acceded to on 22 December 1993 and provide that every individual has the right to life, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. Under international law when force is used excessively without strict compliance with the principles of necessity and proportionality any loss of life that results is an arbitrary deprivation of life.

We are aware that your Excellency's Government had to take measures to ensure security; however any measures that are adopted have to strictly comply with international obligations that have been undertaken by your Excellency's Government. The Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169 of 17 December 1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not in themselves binding law, provide an authoritative and convincing interpretation of the limits the prohibition of arbitrary deprivation of life places on the conduct of law enforcement forces. According to principle 4 of the aforementioned Basic Principles on the Use of Force and Firearms, law enforcement officials should as far as possible, apply non-violent means before resorting to the use of force and firearms. We wish to remind your Excellency's Government that security forces should be equipped with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include non-lethal incapacitating weapons for use in appropriate situations, with a view to restraining the application of means capable of causing death or injury to persons (principle 2). However, "[w]henver the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint

in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

In respect of the 18 reported deaths, we urge your Excellency's Government to undertake urgent investigations, in accordance with principle 9 of the Basic Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65,) which provides that "[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions." Such investigations should clarify the circumstances of each death and shed light on the extent to which lethal force was used, and to what extent the principles of proportionality and necessity were or were not complied with.

We further urge your Excellency's Government to abstain from disrupting radio signals and from targeting journalists who are monitoring the events. 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."

Further, 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 or the protection of the rights and freedoms of others."

Regarding allegations that human rights defenders have been targeted, harassed and threatened due to their participation in the peaceful demonstrations, 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 article 12, paras. 2 and 3, of the Declaration which provides 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.

With regards to the role of media and human rights defender in monitoring demonstrations, we would like to refer to the 2007 report to the General Assembly of the Special Representative of the Secretary-General on the situation of human rights defenders (A/62/225, paras. 91 and 93) that underlines how "monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. [...] The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly. [...] Journalists as well have an important role to play in providing independent coverage of demonstrations and protests. [...] The media must therefore have access to assemblies and the policing operations mounted to facilitate them."

We will continue to monitor development related to this case and would appreciate receiving information from your Excellency's Government on the immediate measures undertaken to investigate the killings, ensure the accountability of any person responsible for the deaths and to prevent further recurrence of such acts. Further, we would appreciate to receive information on measures adopted to ensure that human rights defenders and journalists continue to discharge their functions without interference.

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 the details and, where available, the results of any criminal investigation, prosecution and trial carried out in relation to deaths that occurred during the protests.

3. What steps are being taken to hold those responsible for these killings, both as material perpetrators and as commanders or instigators, criminally accountable?
4. Please indicate whether compensation will be provided to the families of the victims.
5. Please indicate what broader steps, if any, are being taken to address the use of force by the security forces, including measures that are taken to comply with the rules and principles pertaining to proportionality and necessity.
6. Please kindly indicate what measures have been taken to ensure the physical and psychological integrity of human rights defenders as well as their safety when carrying out their legitimate activities in defense of human rights and fundamental freedoms.

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.

Christof Heyns  
Special Rapporteur on extrajudicial, summary or arbitrary executions

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 association

Margaret Sekaggya  
Special Rapporteur on the situation of human rights defenders