

Mandates of the the Independent Expert on the enjoyment of human rights by persons with albinism; 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

REFERENCE:
UA MWI 3/2019

17 July 2019

Excellency,

We have the honour to address you in our capacity as Independent Expert on the enjoyment of human rights by persons with albinism; 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 Human Rights Council resolutions 37/5, 34/18, 41/12 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **threats, acts of intimidation and judicial harassment directed at several human rights defenders**.

Mr. **Charles Kajoloweka** is founder and Executive Director of Youth and Society, a human rights NGO working on community capacity building aimed towards the alleviation of poverty among youth in Malawi.

Mr. **Timothy Mtambo** is a human rights defender and Executive Director of the Centre for Human Rights and Rehabilitation (CHRR). The CHRR is a human rights NGO working towards the protection, promotion and consolidation of good governance by empowering rural and urban communities in Malawi to increase awareness and exercise of their rights through research, education and advocacy. He is also the Chairperson of the Human Rights Defenders Coalition (HRDC), a network of human rights defenders in Malawi advocating for economic justice and government accountability. Recently, Mr. Mtambo has been particularly vocal on the issue of ending violence in Malawi against persons with albinism.

Mr. **Gift Trapence** is a human rights defender, Vice-Chairperson of the HRDC and Executive Director of the Centre for the Development of People (CEDEP), a human rights organization dedicated to supporting and promoting the rights of groups at risk in Malawi, including the LGBTI community, through civic education, training, capacity-building and research.

Mr. **Madalitso Banda** is Chairperson of the HRDC for the eastern region of Malawi.

A communication was previously addressed to your Excellency's Government by several Special Rapporteurs, concerning threats and acts of intimidation and defamation

targeting Mr. Mtambo, on 21 May 2019 (case no. MWI 2/2019). In light of new information received leading to the escalation of our concerns regarding Mr. Mtambo's safety, we wish to herein follow-up on this former communication.

A previous communications was also sent to your Excellency's Government by various Special Rapporteurs concerning threats, acts of intimidation and defamation against Mr. Trapence and CEDEP (case no. MWI 2/2015). We regret that no reply by your Excellency's Government was received to this communication.

According to the information received:

Concerning Mr. Charles Kajoloweka

On 24 June 2019, the Supreme Court of Appeal ordered Mr. Charles Kajoloweka, Chief Executive of the civil society organisation Youth and Society (YAS), to personally pay 21 million kwachas (approx. 35,000 USD) in legal costs connected to proceedings in a public interest case launched by YAS. In the legal action, YAS had sued President Mutharika for his handling of the so-called maize import corruption deal in 2017. In connection to the Court's order on costs, the Attorney General reportedly stated in interview that if Mr. Kajoloweka does not pay the ordered costs immediately the State has "several enforcement mechanisms to deal with the issue" and indicated he may be forced to have Mr. Kajoloweka declared bankrupt and have his properties seized.

Concerning Mr. Timothy Mtambo, Mr. Gift Trapence and Mr. Madalitso Banda

As detailed in the previous communication sent by various Special Rapporteurs referenced above (case no. MWI 2/2019), on 13 May 2019, Mr. Timothy Mtambo was verbally threatened by a youth cadet of the Democratic Progressive Party (DPP) and a journalist for the Malawi Broadcasting Corporation. The threats, which implied plans for the DPP cadets to "deal" with Mr. Mtambo, were connected to his alleged public criticism of Peter Mutharika, President of Malawi and leader of the DPP.

On 26 June 2019, threats were once again made against Mr. Mtambo, on this occasion through Facebook posts by alleged youth cadets of the DPP. The posts referred to Mr. Mtambo as a "foreigner" and warned him that the Ministry of Homeland Security was "working on his issue".

On 3 July 2019, Mr. Mtambo was made aware of escalated threats against him on Facebook by alleged DPP cadets. Therein, amongst other extremely serious threats, those posting on Facebook called for people to "hunt" for Mr. Mtambo, along with his fellow member of the HRDC, Mr. Gift Trapence, and listed places the human rights defenders normally frequent.

On 4 July 2019, Mr. Trapence reportedly received a death threat via text message from a South African phone number. In the message, the sender stated that the human rights defender would be killed that night.

On the same date, threats were made against Mr. Madalitso Banda by five unknown individuals parked in a pick-up truck outside his house. While Mr. Banda was not present during the incident, relatives present at his house heard the individuals stating they would “deal with” the human rights defender for his alleged role in organising demonstrations which have taken place across the country since the General Elections held on 21 May 2019. These demonstrations have demanded an investigation into allegations of fraud connected to the recent elections, along with the organisation of fresh elections and the resignation of the Chairperson of the Malawi Electoral Commission. Mr. Banda subsequently reported the incident to the police, however, he continues to receive threatening phone calls reiterating the message that “they” will “deal with him”.

On 5 July 2019, individuals arrived at the home of Mr. Banda with a two-litre bottle of petrol, with the reported intention of setting the house on fire, only to be chased away by the human rights defender’s dogs. Similar incidents and further threats against organisers of the post-election demonstrations, including against members of the HRDC, have also occurred.

On 6 July 2019, a statement was made by President Mutharika condemning the post-election demonstrations. In the statement, the President reportedly accused the organisers of the demonstrations, which include the HRDC, of seeking to turn Malawi into a “lawless state” and as amounting to unacceptable acts of “intimidation”. The President further promised that the “law will take action” against those involved in organising the demonstrations.

On 9 July 2019, Mr. Mtambo and Mr. Trapence, along with the HRDC, were served with a summons of the opening of civil proceedings against them by FDH Bank and the Chief Executive of its parent company, FDH Financial Holdings. The summons called for the payment and apology in relief of damages caused by a report allegedly published by the HRDC on 5 July 2019, alleging that FDH bank and the Chief Executive of its parent company had financed operations aimed at rigging the General Elections in favour of the DPP. On the same date, the human rights defenders also received an interlocutory injunction obtained by FDH Bank and the Chief Executive of its parent company, restraining them from “causing reckless, malicious and defamatory publication of the Claimants through a Report” up until the hearing and determination of the civil proceedings opened through the summons.

On the same date, Mr. Trapence was arrested and detained at Area 3 Police Station in Lilongwe, allegedly on charges of running an NGO without registration with the NGO Board and misuse of funds received from UNAIDS.

On 10 July 2019, Mr. Trapence was remanded in custody at Maula prison after prosecutors alleged that his release might compromise investigations into the claims against him. UNAIDS have clarified that no legal action was taken nor required by UNAIDS in relation to Mr. Trapence.

On 12 July 2019, the Lilongwe Magistrates Court granted Mr. Trapence's release on bail and scheduled the next hearing in the case for 13 August 2019.

On 15 July 2019, the injunction filed against Mr. Mtambo, Mr. Trapence and the HRDC was withdrawn by FDH Bank.

Concern is expressed at the continuing threats against Mr. Mtambo, in particular given their escalating nature, along with threats and acts of intimidation directed against Mr. Trapence and Mr. Banda, which may be related to their human rights work and the exercise of their rights to peaceful assembly and of association and to freedom of opinion and expression. We express further concern that these acts of harassment come in the context of shrinking of space for civil society and human rights defenders in the post-electoral context in Malawi, including through the use of civil actions by private actors to intimidate civil society and restrict them in their crucial work promoting and protecting human rights and ensuring governmental accountability.

Concern is also expressed at the ordering of the entire legal costs of the proceedings initiated by YAS to be personally borne by Mr. Kajoloweka, which we fear may deter him and other members of civil society working on corruption and accountability in Malawi from engaging in public interest litigation in the future.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above, in particular articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Malawi 22 December 1993.

We remind your Excellency's Government of the duty under the ICCPR Article 19 in conjunction with Article 2, to put in place effective measures to protect against attacks aimed at those exercising their right to freedom of expression, CCPR/C/GC/34 para. 23. It requires States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities, *Id.*, para. 7. Attacks, including threats to life should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims [...] be in receipt of appropriate forms of redress", *Id.* para. 23.

We would also like to refer to 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, also known as the UN

Declaration on Human Rights Defenders, and in particular to articles 1, 2, 5, 6, 7, 9 and 12.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 international instruments.

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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations;
2. Please provide detailed information on the steps taken to address the acts of intimidation and threats against Mr. Mtambo, Mr. Trapence and Mr. Banda, including to investigate and bring to justice the alleged perpetrators in accordance with international human rights law, and to ensure their physical and psychological integrity;
3. Please provide detailed information on the status of investigations into and the prosecution of the offences allegedly committed by Mr. Trapence;
4. Please provide detailed information on how the requirement for civil society organisations to be registered with the NGO Board is compatible with the right to freedom of association as established in article 22 of the ICCPR, and the legal provisions that formed the basis for the arrest and detention of Mr. Trapence;
5. Please provide information on steps that have been taken to ensure that the costs of legal proceedings in matters of public interest do not impede the right to an effective remedy as established in article 2.3 of the ICCPR;
6. Kindly indicate what measures have been taken to ensure that human rights defenders in Malawi are able to carry out their legitimate work in an enabling environment without fear of threats or intimidation of any kind.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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