Defending human rights is NOT a Crime!

A brief report on the political crisis in Malawi and the situation of human rights defenders

Compiled by the Centre for Human Rights and Rehabilitation

On behalf of the Human Rights Defenders Coalition

The current political situation in Malawi

Malawi is currently mired in a serious political crisis. Following the Tripartite Elections that were held on 21st May 2019, the incumbent, Arthur Peter Mutharika, was on Tuesday 28th May 2019 sworn in for a second term of office. However, the main opposition political party, the Malawi Congress Party (MCP), has refused to recognize his presidency.

On June 21, the party’s members of Parliament (MPs) walked out of Parliament as Mutharika delivered his State of the Nation Address (SONA). Up to now, the party has not responded to the SONA as per tradition. A petition by the main opposition party, the Malawi Congress Party (MCP) and the United Transformation Movement (UTM), challenging the results of the presidential election, is currently in the courts. The Constitutional Court has validated the petition and set July 29 as date for the hearing of the substantive case.

Outside the court, peaceful demonstrations organized by the Human Rights Defenders Coalition (HRDC) have been held across the country by citizens to express displeasure with the many irregularities that marred the elections in many parts of the country and the manner in which the Malawi Election Commission (MEC) managed the results of the presidential election. The citizens have specifically called for the resignation of the MEC chairperson, Justice Dr. Jane Ansah. However, Dr. Ansah has insisted she will not resign, arguing she operated within the law and that the Constitutional Court, which is hearing the petition for the nullification of the presidential results, will determine if she was wrong or not. Prominent opposition political figures, notably MCP President, Dr. Lazurus Chakwera, and UTM’s president, Dr. Saulos Chilima, have been taking part in the protests which were held on June 20 and July 5, 2019.

While the demonstrations have been largely peaceful, in some parts of the country they have turned violent, with criminals masquerading as demonstrators, taking advantage of the situation to loot and vandalize public and private property. The HRDC, which has insisted all along that the protests are peaceful, has distanced itself from the violence and urged police to arrest whoever was responsible for the looting and vandalism. So far, police have arrested 68 people in connection with the looting. Some of those whose property has been destroyed include senior ruling DPP politician, Grace Chiumia, who lost a house and several cars and party-coloured...
bicycles when some unknown people threw a petrol bomb at her house during the demonstrations. However, in what appears to be a retaliatory attack, some unknown people burned down a house belonging to MCP Youth Director, Richard Chimwendo Banda in Mvera, in Dowa district\(^6\). The house caught fire after people threw a petrol-bomb at the house.

**Status of Human Rights Defenders**

In the wake of the post-election demonstrations and the violence that has ensued in many parts of the country, the situation of human rights defenders in Malawi has deteriorated significantly. Some of the key challenges facing the HRDs are highlighted below:

1. **Increasing vitriolic anti-HRD rhetoric**

   Since July 5, when the HRDC organized the national wide protests in an attempt to force the resignation of MEC chairperson, Dr Jane Ansah, Malawian authorities have ramped up their rhetoric against the HRDC, with the President of Malawi, Peter Mutharika, recently accusing the HRDC of plotting to overthrow the government. In a speech he delivered on 6\(^{th}\) July 2019, to mark the commemoration of the country’s independence from the British, the President warned that “We will hold each one of them accountable, force will be met by force and this nonsense will come to an end”\(^7\). With such rhetoric, regime thugs are now acting with impunity against HRDs. Over the last few weeks, a number of HRDs, notably Timothy Mtambo and Gift Trapence, have received death threats for their role in organizing the demonstrations.

   Even grassroots activists have not been spared. On 5\(^{th}\) July 2019, Madalitso Banda from Zomba was forced to flee his home after he found an unexploded petrol bomb near his house. Prior to finding the petrol bomb, Banda had received several life-threatening calls from a private mobile number. He is currently in hiding following repeated threats to his life and his family.

2. **An impending lawsuit against HRDs on demo damages**

   Human rights defenders, operating under the Human Rights Defenders Coalition (HRDC), are facing an impending lawsuit by the government in relation to the looting that took place during the June 20 and July 5 mass demonstrations. The Government is planning to use a vague provision in the Police Act to drag the Human Rights Defenders Coalition (HRDC) to court to force it to pay costs of damages that occurred during the post-election demonstrations.

   Through a statement released by the Ministry of Homeland Security on Monday 8\(^{th}\) July 2019, the Ministry has directed government ministries, departments and agencies (MDAs) to claim for damages to property from organisers of nationwide demonstrations that were organized to force Malawi Electoral Commission (MEC) chairperson Jane Ansah to resign. The ministry has also extended the same to individuals whose property was damaged in the course of the demonstrations held on June 20, July 4 and July 5, 2019, organised by the HRDC. If this happens, the HRDC could be faced with millions of dollars in compensation claims from MDAs and private citizens, a situation that could permanently cripple, if not entirely erase, the HRDC.

---


However, the HRDC has maintained that those who engaged in violent acts in the course of the demonstrations were not part of the protesters, but criminals who had infiltrated the protesters. The damages happened outside the protesters' routes as agreed with the police; hence, the organisers are not responsible for the costs.

3. Another looming lawsuit by FDH bank on a ‘doctored’ report

The HRDC is facing another lawsuit from the FDH bank, owned by a ruling Democratic Progressive Party (DPP) sympathizer, Dr. Thom Mpinganjira, who is also the bank's Chief Executive Officer. On July 9th, 2019, the bank obtained an injunction at the High Court in Blantyre, restraining the HRDC leaders, Timothy Mtambo and Gift Trapence, from targeting the bank “in all their undertakings aimed at pressuring the MEC chairperson, Jane Ansah, to resign”9. The order also stops the HRDC and its members from publishing or mentioning the bank, claiming doing so is defamatory and is causing malicious and reckless damage to the bank. The bank also accuses the HRDC of pelting stones at –and breaking glasses of –the FDH bank at Umoyo House while chanting and signing songs denigrating the bank’s CEO10.

At the heart of the matter is a report purportedly authored by the HRDC, claiming that the FDH bank had financed rigging operations of the ruling DPP. However, the HRDC has denied ever authoring such a report. The HRDC has, however, through media interviews, questioned the bank on its role in the controversial K4 billion deposit into the MEC Chief Executive Officer’s bank account on May 20, 2019, a day before the Tripartite Elections. The HRDC, like most observers, have simply wondered why government transferred such a huge amount of money into a bank account owned by the CEO of the electoral commission a day before the elections. The HRDC has also questioned the rationale behind such a transaction particularly considering that the owner of the bank is a member and one of the financers of the ruling party.

4. Wave of arrests against HRDs

Since July 5, Malawian authorities have arrested several human rights defenders in a mounting onslaught on the rights to freedom of expression and association. For instance, on 9th July 2019, Malawi Police arrested prominent HRDs, Gift Trapence and Reverend McDonald Sembereka, on allegations that they had misappropriated UNAIDS funds11. However, UNAIDS has said in a statement that it has amicably reached a resolution with the NGO in question over the issue and that “there is no need for legal action”. The arrest of the two HRDs, coming barely two days after a series of anti-government mass demonstrations, is a clear sign that government is bent on punishing these activists for their role in organizing the demonstrations.

There have also been several arrests made of grassroots human rights defenders, who are accused of looting and destroying property during the July 5 demonstrations. For instance, in Rumphi district, 10 HRDs have been arrested. The HRDs have been charged with the vague offence of conduct likely to cause breach of peace. In Mzuzu city, 29 have been arrested.

---

8 https://mwnation.com/hrdc-says-wont-pay-for-demos-damage/
9 https://www.times.mw/fdhs-thom-mpinganjira-obtains-injunction-against-hrdc/
10 Ibid
11 https://www.times.mw/activists-arrested/
The Centre for Human Rights and Rehabilitation has embarked on a comprehensive exercise across the country to investigate how many of those arrested are HRDs and to determine the charges leveled against them so as to design appropriate interventions to obtain their release.

Immediate needs of HRDs

1) **Provision of legal support for HRDs who have been arrested**

In view of the threats by the Ministry of Homeland Security to force the HRDC to pay costs of damages that occurred during the post-election demonstrations, there is need to hire a legal team to represent the HRDC in the event that court action has been brought against it or any of its members.

With the recent arrests of prominent and grassroots human rights defenders, there is also need to beef up the litigation budget to enable CHRR to hire a lawyer to bail out all human rights defenders who have been arrested and provide legal representation where necessary.

Furthermore, there is need for financial support to provide legal support to those human rights defenders who have been arrested in the districts following the July 5 mass demonstrations.

2) **Security for HRDs**

With the increasingly tense political climate precipitated by the July 5 demos, which turned violent in many parts of the country, there is increasing likelihood of vengeance and retribution by ruling party supporters against individual HRDs who took a leading role in organizing the protests. Already, as highlighted above, a number of prominent human rights defenders have received death threats from anonymous sources for their role in the demonstrations.

There is, therefore, need to secure a safe house to ensure that HRDs who are facing threats to their personal security can be safely relocated and accommodated.

There is also need to strengthen security of for frontline HRDs beyond office –even at their residences. They have been numerous threats leveled at the HRDC leadership to burn down their residences. Such threats need to be taken seriously considering the revenge attacks leveled against the MCP Youth Director, Richard Chimwendo Banda, whose house was petrol bombed by unknown people in the wee hours of Tuesday, 9th July 2019.

3) **Internal relocation for families**

Another issue requiring urgent attention is the safety of families of frontline HRDs. This is in view of security threats that have been levelled against immediate families of the HRDs.

There is, therefore, need to urgently consider separating activists from their families and relocating them to safer places to ensure their safety and security.

Long term needs

4) **More safe houses in strategic cities**

Considering the threats facing HRDs across the country, there is need to establish two more safe houses in strategic cities like Blantyre and Mzuzu to complement the one in Lilongwe. Doing this would not only reduce travel costs, but also minimize the risk such HRDs are exposed to when traveling to the sole safe house, which is located in Lilongwe.
5) External relocation

There is also need to look into the possibility of relocating some HRDs outside the country in view of increasing threats to their personal security.