29th July 2019

The Inspector General of Police

Malawi Police Service

Private Bag 305

LILONGWE

Attn: Rodney Jose, PPM

Dear Sir,

Protection of Persons and Property during Demonstrations Convened By the Human Rights Defenders Coalition

Reference is made to your letter dated 26 July 2019 regarding the right to assemble and demonstrate with others peacefully and unarmed as enshrined in section 38 of the Constitution of Malawi. The Human Rights Defenders Coalition (HRDC) deeply appreciates the gesture and spirit of engagement demonstrated by your Office through this letter.

While we appreciate the capacity challenges your office is facing in providing security to persons and property during demonstrations, we strongly feel that your letter has been addressed to the wrong entity. Your letter should have been
addressed to your appointing authority, President Peter Mutharika, who would have either found the most appropriate ways to strengthen your capacity in fulfilling your mandate or replace you with a more capable person.

The HRDC is, in fact, taken aback by your blatant political partisanship apparent in the manner you have avoided addressing the root cause of these demonstrations and ignored incidences of violence linked to DPP cadets, such as the torching of MCP’s office in Blantyre. As Inspector General, you are not supposed to engage in acts of political partisanship. You are supposed to be impartial and show no political sides. Such partisanship leaves us with no choice but to conclude that your office does not have the public interest at heart but rather the DPP interest.

Nevertheless, in the spirit of responsiveness and engagement we feel obliged to make the following observations in reaction to your letter:

1. It is unconstitutional and abuse of power for your office to stop HRDC and all Malawians of goodwill from exercising their constitutionally guaranteed right to peaceful and unarmed demonstrations under Section 38 of the Republican Constitution. Besides, there is no Law in Malawi that gives powers to Malawi Police Service to suspend such right.

2. Malawi Police Service has “no right to comment” or give directions on future demonstrations. This is grounded in the fact that Section 92-111 of Police Act provides that all demonstrations are localized under laws of Malawi and as such, any comment on a demonstration has to be for a particular localized demonstration. In fact, the Police Act does not give powers to the Inspector General of Police, let alone the district specific Officer In Charge of Police, to respond to a written notification of a demonstration by organizers of such. Such powers are exclusively vested in the District Commissioners (DC) or Chief Executive Officer (CEO).
Officer-In-Charge of Malawi Police Service is only kept in the loop (or made aware of) about a particular mentioned localized demonstration, and can be merely consulted by the DC or CEO on matters of security where a particular demonstration is taking place based on a written notification. The Police Act further recognizes a police officer in the locality at the rank of Inspector and above to advise conveners of demonstrations on relevant matters of security. It is for this reason that we feel you were ill-advised on this matter.

3. HRDC wishes to draw your attention to several court decisions where the courts have clearly and consistently made it clear that no Government, Public, Political or any other Office has the right to suspend enjoyment of human rights by people of Malawi. The Courts have further clarified that no Government, Public, Political Office or any other office has the authority to suspend the right of Malawians to demonstrate peacefully and unarmed as provided and guaranteed under section 38 of the Constitution of Malawi.

4. HRDC further observes that the failure of your office to deal with few incidences of violence that have occurred after our peaceful and unarmed demonstrations is largely due to unprofessionalism of the Police, the Chief Executive officers or District Commissioners who seem to be bent on serving the ruling party selfish interests aimed at curtailing the full enjoyment of the right to peaceful assembly. Besides, your office has failed to act on the recommendations of the 2011 Commission of Inquiry report in relation to addressing violence during demonstrations. For example, the 2011 Commission of Inquiry report recommended your office to be non-partisan and also develop comprehensive guides and strengthen the capacity of the Police on crowd control during mass demonstrations. It is sad to note that 8 years down the line, your office has
done nothing in addressing this, and has instead opted for blame games by accusing CSOs of being behind the violence that has accompanied these demonstrations.

5. HRDC has always condemned any acts of violence and criminal conduct that have accompanied its peaceful and unarmed demonstrations. Just like we have always done before every demonstration, we call upon law enforcers to bring the perpetrators to book. It is the responsibility of the Malawi Police to prevent, detect, investigate and follow up on all criminal related cases including those occurring during and after demonstrations. HRDC categorically disassociates itself from these barbaric acts as they are neither part of its agenda nor accepted in a democratic dispensation.

6. Instead of preventing Malawians from fully enjoying their right to peaceful and unarmed demonstration, we urge the Malawi Police Service to efficiently and effectively utilize the human and financial resources – sourced from the tax payers money NOT the ruling party- to fulfil, respect and protect the right to demonstration as it is being exercised by Malawians in pursuit of electoral justice and beyond. For example, your office could make use of non-lethal crowd control methods such as use of drones, water cannons, and public order paint spraying vehicles as part of your mandate of protecting Malawian population.

7. On a different note, we find some of the comments you made during your joint press conference with the Army Commander as misleading and a deliberate distortion of facts. Firstly, your insinuations that Malawians can never be allowed to hold peaceful and unarmed demonstrations on a daily basis has no legal (and human rights) basis. In fact, Malawians of good will are free to exercise their right to peacefully assemble and demonstrate with others daily if necessary to force Justice Ansah resigns or
her appointing authority to act. HRDC and all Malawians of goodwill will not be moved by such unconstitutional rhetoric that is only bent at serving narrow political interests of the ruling party at the expense of the public interest. Secondly, you accused the HRDC and Malawians of goodwill of labelling you a DPP cadet yet –according to you- you have the public interest at heart in the manner you have discharged your duties. Memories are still fresh of how you publicly rejected our request to have a dialogue meeting with you on matters of national interest relating to your office simply because HRDC lobbied Parliament not to approve your name as IG based on your alleged role in the murder of Robert Chasowa. By rejecting our request to meet, you clearly demonstrated from the very onset that the Malawi Police Service under your leadership was geared at serving only those who supported your appointment (in this regard President Mutharika, DPP MPs and DPP) at the expense of your perceived critics (in this regard HRDC, the Opposition, and all Malawians of goodwill). Indeed, the events that have characterized your tenure, such as the ruling party thugs beating demonstrators in full view of the Police, the failure of the Police to effect arrests and conclude political violence cases implicating those linked to the ruling party, and your continued selective approach to condemning violence where you have deliberately played a blind eye to the arson against MCP building in Blantyre and a number of UTM members vehicles which have so far been torched, speak volume of the fact that your office serves the ruling party interests. It is sad that under your watch, the Malawi Police Service has turned itself into a paramilitary wing of the ruling party”. The public perception of the Police, especially under your leadership, is negative, and this perhaps explains why the protesters seem to have more trust in the Army (who are ironically only supposed to play a complementary role to Police in rare, exceptional, cases when called upon with the primary responsibility to
ensure security coverage during demos lies with the Police) than the Police. It is therefore important for your office instead of complaining about some citizens chasing away the Police during the demonstrations to have some soul-searching questions like: why are the police officers being chased away? Your office needs to invest much in public image restoration.

Lastly, HRDC remains committed to engaging and working closely with the Police during localized demonstrations organized by HRDC so that demonstrations remain peaceful. However, we will not accept any vestiges of intolerance and intimidation as well as unconstitutional means aimed at closing the civic space which Malawians of goodwill fought for in 1993. HRDC remains the voice of the people.

Yours Sincerely,

Timothy Mtambo
Chairperson HRDC

Gift Trapence
Vice Chairperson HRDC

Happy Mhango - HRDC Chair North
Madalitso Banda - HRDC Chair East
Dr Billy Mayaya - HRDC Chair Centre
Masauko Thawe - HRDC Chair South