07th October, 2019

The United Nations Human Rights Commission

Office of the High Commissioner,

52 Rue des Paguis,
Geneva1201
Geneva
Switzerland

Dear Sir,

MALAWI HUMAN RIGHTS DEFENDERS COALITION’S (HRDC) SUBMISSION OF COMPLAINTS AND REPORT AGAINST MALAWI GOVERNMENT-SPONSORED VIOLATION OF THE RIGHT TO ASSEMBLY AND DEMONSTRATE.

The Human Rights Defenders Coalition (HRDC) is a network of Human Rights Organisations and Defenders established and registered in 2018 and officially launched on 11 December 2017, a day after the commemoration of the World Human Rights Day as a space to promote, among other rights, the enjoyment of the rights to freedom of expression, association and assembly by the civil society. The HRDC was established by the Centre for Human Rights and Rehabilitation (CHRR), Centre for the Development of People (CEDEP) and the Malawi Law Society (MLS) following a UNDP-supported roundtable discussion on the civic space that was held on 13 December, 2016 in Lilongwe, attended by human rights defenders and journalists. The establishment of HRDC is in line with the UN Declaration on Human Rights Defenders 1998 and the Commission’s Resolutions on Human Rights Defenders including ACHPR/Resolution 69(XXXV) 04, ACHPR/Resolution 119(XXXXII) 07, and ACHPR/Res.196 (L) 11. Its main objective is to respond to safety and security needs of HRDs and create an engagement platform for all Human Rights Defenders in Malawi. HRDC seeks to achieve its mission through civic education, research, capacity building, evidence-based advocacy and public interest litigation. The Human Rights Defenders forum is currently co-hosted by CHRR and CEDEP.

The HRDC’s formation was Malawian civil society’s strategic and urgent response to the shrinking civic space in Malawi, evident in the proliferation of repressive new polices which aimed to restrict the civic space, arrest dissent views, decrease CSOs access to financial support, and threats as well as attack against human rights defenders engaged in legitimate human rights work. The coalition has membership across the four administrative regions in Malawi –the Southern, Eastern, Central and Northern, as well as members in each of Malawi’s 28 districts, and chapters in tertiary institutions, mainly Universities of Malawi, Mzuzu, Malawi Assemblies of God and Livingstonia.
Notably, the HRDC has for the recent past months of March – June 2019 organized peaceful countrywide civil resistance activities in reaction to the rampant adaption and killings of persons with albinism and pressurized government for the need to adequately protect them; the positive impact of which being the realization of allocation of some significant funding in the current seating of parliament considering the 2019-2020 national budget. The actions led to the 2019/2020 National Budget including MK600, 000,000 (USD 819 000) to construct houses for persons with albinism, and MK400, 000,000 (USD 546 000) to implement the action plan for the protection of persons with albinism. There also has been significant reduction in abductions and killings of persons with albinism.

Current Context of referenced Complaints and Reports

Over the last five months (June, July, August, September and October 2019), the HRDC organized demonstrations throughout the country against the Malawi Electoral Commission. On 21st May 2019, Malawians went to polls to elect leaders of their choice (President, Members of Parliament and Local Councillors) through the universal suffrage. Procedural and substantive irregularities, mismanagement, unprofessional conduct, incompetence and bias on the part of the Malawi Electoral Commission riddled this electoral process. In the aftermath of this fraudulent process, Malawians from all walks of life aired their dissatisfaction through dissent, and protest, with the HRDC calling for and leading some of the protests and calls for the resignation of the chairperson of the Malawi Electoral Commission, Justice Dr. Jane Ansah and her entire commission. The government of the Republic of Malawi tried to block and thwart aggrieved Malawians from the enjoyment of their right to assemble and demonstrate through multiple and divergent state sponsored tactics including inter alia: (1) Police brutality - violence and excessive use of force by the Malawi Police Service, (2) SLAPPs (Strategic law suits against public participation) – systematic state attempts through legal means (e.g. court injunctions against demonstrators) to suppress dissent opinion and intimidate human rights activists. The above context has resulted in government-sponsored violations of the right to assembly as provided for under section 38 of the Malawi constitution and article 20(1) of the Universal Declaration of Human Rights (UDHR). The Malawi government is using the Malawi Police Service and the governing party operatives (otherwise known locally as the Democratic Progressive Party Cadets) to physically assault, torture, injure and maim demonstrators, human rights activists, and all perceived opponents of the state. A recent peaceful demonstration in Blantyre city on 25th September, 2019 saw Malawi Police Service tear gassing Queen Elizabeth Central Hospital (Malawi’s Referral hospital) adversely affecting and complicating the conditions of some patients, hospital staff and visitors.

It is against this background that has prompted the HRDC to officially submit the complaints and report to the United Nations.

1. The Complaints:
Complaint No.1: 25/09/2019: Denied right to assembly and demonstrate peacefully and unarmed:

Evidence: The Human Rights Defenders Coalition (HRDC) organized demonstrations on the 25th September, 2019 in the commercial city of Blantyre. Purposely the demonstrations were aimed at petitioning the Southern Africa Development Community (SADC) Electoral Commission Forum (ECF) Annual Conference held at Mount Soche Hotel (attachment No.1: HRDC copy of the petition to SADC ECF annual conference). Albeit undertaking to fulfil all the established legal requirements as a prerequisite to convening demonstrations viz notices of intend to the local assembly and police (Attachment No.Ia: HRDC letter of notification, 1b. HRDC petition to SADC).

HRDC was dismayed to see an assemblage of the governing party operatives (DPP cadets) that began pelting stones and beating peaceful and unarmed demonstrators with iron bars in full view of the Malawi Police. The Malawi Police did nothing to protect the citizens and peaceful demonstrators instead opted to run away from the scene of incident. Immediately after the HRDC peaceful assembly and
demonstrations were disrupted, the same ruling party operatives many of whom dressed in their party colours were paraded in the same route that HRDC demonstrators purported to take with full escort of the same police that abandoned the peaceful HRDC demonstrators. It was without difficulty to conclude that it was a deliberate connivance between the police and the ruling party operatives to disrupt the peaceful assembly thereby effectively denying peoples’ right to assemble and demonstrate with the ruling party operatives eventual demonstrations that overtook the HRDC demonstrations which took the same route were not supported by the fulfilment of the law (Attachment No.2a: photographs of Party operatives pelting stones at peaceful demonstrators). To buttress over these unfortunate developments in Malawi, major human rights organizations have so far condemned the Malawi government over these acts (attachment No.2bc: press statements of various human rights organizations over the matter).

Complaint No.2: 25/09/2019 - Brutal Assault of Dr. Billy Mayaya and 4 others

Evidence: Dr. Billy Mayaya is the chairperson of the HRDC for the Central Region of Malawi and a well-known human rights activist. Dr. Billy Mayaya alongside 4 others were brutally attacked by these governing party operatives (DPP cadets). As one of the conveners of the demonstrations Dr. Billy Mayaya was targeted and heavily beaten with a metal bar and was stoned for exercising his right to assemble with others peacefully and unarmed. He sustained major injuries with multiple and deep lacerations and together with 4 others are currently hospitalized and battling for their life after they were hacked, stoned and sustained despicable injuries by their assailants (attachment No.3 abc: 3a. video clips, 3b. pictures and 3c. newspaper captions). Dr. Billy Mayaya and four others were attacked in full view of police.

Complaint No.3: 25/09/2019 Death of child and Suffocation of Patients, Hospital visitors and Medical Personnel as a Result of Firing of Tear Gas at Queen Elizabeth Central Hospital, Blantyre.

Evidence: On the 25th September 2019, Malawi Police Service fired tear gas into Queen Elizabeth Central Hospital in attempt to disperse demonstrators who were at some short distance to the hospital premises. A child is reportedly to have died due to suffocation resulting from the tear gas fired by the police, some patient was suffocated and went unconscious. This was happening while protesters were escaping the brutal attacks by DPP Cadets. Due to this act of the police, the hospital’s medical personnel could not execute their duties because of the effects of tear gas. (Attachment No.4a: letter of condemnation 4b. link: https://times.mw.demonstrations-turn-ugly/).


Evidence: On 18 September 2019, Justin Phiri, a human rights defender was arrested during an electoral reform protest, beaten by alleged state security details before he was detained in police custody in a northern district of Karonga. On 20 September 2019, while the late Justin Phiri was in police detention, the Police Officers negligently turned down his family’s request for Justin Phiri to access urgent medical assistance, and refused to give Justin the medicine they had brought, resulting in his untimely death due to massive blood loss, and after excruciating pain. It is from such negligence of the police that the late Justin Phiri died from his untreated wounds. HRDC think that all these are in effort to scare away demonstrators enjoying their right to assemble. (Attachment No 5:Link for publication: https://www.nyasatimes.com/postmortem-preliminary-report-says-anti-ansah-protester-died-of-infected-wounds/).
Mr. Timothy Pagonachi Mtambo is the chairperson of the Human Rights Defenders Coalition (HRDC) in Malawi and Executive Director of Centre for Human Rights and Rehabilitation- a well-known leading human rights organization in Malawi. Mr. Mtambo’s leadership of the group has exposed him to continuous death threats, and attempts on his life and that of his family members. Recent incidences include: (1) petrol bombing of Mr Timothy Mtambo dwelling house in Lilongwe city where he lives together with his wife and his three young children. (2) Petrol bombing of Mr Timothy Mtambo parents’ house in the northern district of Chitipa. In both petrol bombings in Lilongwe and Chitipa, properties (house, cars, food, items, clothes and other household properties) were destroyed due to fire from the petrol bomb; (3) Mr. Timothy Mtambo’s uncle was suspiciously run over by a police vehicle. Witnesses have reported that he was run over, and the police car reversed to run him over again, apparently to make sure that he was dead. To date, no police investigations have been instituted for all the 3 incidents despite several reporting calls for police to investigate the matters.

**Evidence 1:** On 15\(^{th}\) August, 2019 Mr. Timothy Mtambo’s house was petrol bombed by suspected governing party operatives. (2) Mr Timothy Mtambo parents’ house in the northern district of Chitipa on 23\(^{rd}\) August, 2019 was equally petrol bombed by the same suspected assailants. This led to the destruction of properties (a vehicle) due to fire from the petrol bomb; (3) A Malawi police hit dead Mr. Timothy Mtambo’s uncle (Mr Binwell Mtambo) on 1\(^{st}\) August, 2019. This was a suspicious death considering the fact that it happened amidst serious threats against Mr Mtambo and his family. Mr Mtambo continues to receive numerous death threats from the regime. To date, no police investigations have been instituted for all the three incidents. *(Attachment No. 8a: refer to newspaper captions: 8.b. News link: mwation.com/police-vehicle-kills-ntambos-uncle/ 8c; news Link: 8d:* 

**Evidence 2:** Of similar occurrence, activist Gift Trapence who is also the vice chairperson of HRDC had his house attacked on the eve of September 28, 2019 by suspected assailants who attempted to burn his house through alleged and staged electrical fire which targeted his main house. Police investigations were instituted however, nothing tangible has come out from the police. It is apparent that there is wide grown negligence by the police to investigate such matters evidenced by their reluctance to act swiftly on their part. *(Attachment No. 8d : refer to News link for the attack on Gift Trapence:* http://nyasatimes.com-activist-trapence-suffers-suspected-terror-attack/) .Another Human Rights Activist from the Northern part of Mzuzu, Gibson Chisale had his house torched during the nationwide demonstrations held on 6\(^{th}\) August 2019. The attack is suspected to be connected to his active role in organising the demonstrations by the HRDC. Meanwhile no arrests and investigations have been made.

**Evidence 3:** On 21 October 2019, human rights defender Reverend McDonald Sembereka’s house was attacked by five unknown men in camouflage clothing. The attackers fired gun shots in the direction of McDonald Sembereka’s house at around 1a.m. in Nyewa, in the city of Lilongwe, along the Lilongwe-Mchinji road. Before leaving, they shouted death threats at the human rights defender telling him that he'll be killed if he doesn't end his involvement in ongoing post-electoral demonstrations in Malawi. This attack is believed to be part of a pattern of harassment against human rights defenders following mass protests denouncing irregularities in the presidential elections held on 21 May 2019. In particular, human rights defenders and individuals associated with HRCC have been targeted. McDonald Sembereka and his colleagues have been organising demonstrations demanding the resignation of Jane Ansah, the Chairperson of Malawi Electoral Commission after she failed to respond to claims of
electoral irregularities. In all this circumstance, the Police has maintained its tone that it is still investigating the matter.

Evidence 4. On 5th July, 2019, another Activist, Masauko who is also the Human Rights Defenders Chairperson for Southern Region was attacked on by party operatives (well known as cadets) which left his car smashed. The incidence was happening at the watch of Malawi Police Service which failed to protect protesters and the said activist. The attack was meant to silence him and block peaceful demonstrations. No arrests were made in the vein. (Refer to the link: https://www.voanews.com/africa/election-protesters promise- vigils-malawi)

Complaint No. 6: 27/09/2019 - Injury of a Human Rights Activist, Moir Walita Mkandawire in the Northern District of Rumphi

Evidence: Mr Moir Walita Mkandawire is the HRDC leader for Rumphi district. He has been a frontline defender for and chief organizer of the post-elections peaceful protests in Rumphi district. Walita has several times been targeted by unknown assailants suspected to be from the ruling party operatives. He received several threats and on 27th September 2019 he was badly assaulted by the Malawi Police Service details during the Ant Quota demonstrations. To date the police has not instituted any investigation despite the victim officially reporting the matter to Police. Mr Mkandawire is currently receiving medical attention (Attachment No. 9a. pictures 9b. Copy of the medical report and 9 c. news caption).

Complaint No. 7: 1/10/2019: Shooting of Human Rights Defender, Jeremiah Gladwell Kaude in Central District of Capital City Lilongwe

Evidence: On 1st October, 2019 Jeremiah was shot with a live bullet at Lilongwe Church of Presbyterian(CCAP) by an armed police officer at a time when the police officers had fired teargas to disperse peaceful demonstrators. He underwent through surgery on Tuesday 1st October, 2019 where the live bullet was removed from his body at Kamuzu Central Referral hospital. The rights defender was un armed and had been taken to hospital by a well-wisher (Attachment 10(a). Pictures 10b. News Caption). Since the shooting of the victim, there has been no any action from the Police service.

Complaint No 8. 09/10/2019: raping of Nsundwe Women, Lilongwe in the Central District Of Lilongwe

Evidence: On 08th October, 2019, a police officer was killed by angry mob following tensions that rose as are result of demonstrators blocking party cadets from patronizing a political rally. A police officer, Mr Imedi was killed in line of duty. The Following day on 09th October, 2019 Malawi Police Service was raided Nsundwe area to restore peace where they took advantage of the situation to teargas the women and rape them. These are women whose husbands were suspected to be part of the angry mob that had killed Mr Imedi. Ironically the Police took it as a revenge following the death of one of their own. Since the incidence, none has been arrested and the government remains quite to act on the matter despite overwhelming evidence on the matter. Some of the women were as young as 16 years. Several stakeholders have condemned the behaviour by the Malawi Police Service(refer to link : https://www.nyasatimes.com/malawi-police-sexually-abuse-nsundwe-women/) (https://mwnation.com/when-police-grope-rape-women/)

ACTIONS REQUESTED

In light of the above, the HRDC kindly requests your esteemed office to take the following possible actions to:

Write to the authorities of Malawi asking them to:
i. Guarantee the physical and psychological wellbeing of HRDC members and all human rights
defenders in Malawi;

ii. End harassment, death threats, torture including the arson attacks, against Mr. Timothy Mtambo
and his deputy Mr. Gift Trapence, their families and all human rights defenders in Malawi, and
ensure that they are able to carry out their activities without hindrance;

iii. Conform to the provisions of Chapter IV of the Malawian Constitution and the provisions of
the of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of
the United Nations on December 9, 1998, especially Articles 1 and 12.

iv. Ensure the respect for human rights and fundamental freedoms in accordance with the
Universal Declaration of Human Rights and other international human rights instruments
ratified by Malawi, such as the Declaration on Human Rights Defenders etc.

v. Ensure that all perpetrators of violence, threats and attacks of HRDs and Activists should be
investigated and brought to justice.

vi. Stop politicizing the Malawi Police Service (MPS) and should ensure that the Police operates
independently, impartially and professionally. Further call upon the Malawi government to
operationalize the independent police complaint commission as per the Universal Periodic
Review (UPR) recommendation.

With this tendency of despondence, over control of rights and brutality at the hands of Malawi
government, the Human Rights Defenders Coalition (HRDC) deemed it fit and proper to raise these
concerns and officially report to your office for your right action and possible intervention recognizing
that Malawi is a signatory to the Universal Declaration of Human Rights (UDHR) and other human
rights instruments and protocols.

For your appreciation of the status of the general human rights situation in Malawi also find, attached,
a report co-authored by our organization (HRDC) Centre of Development of People (CEDEP) and the
Centre for Human Rights and Rehabilitation (CHRR) on shrinking civic space in Malawi.

We count on your support as we strive to promote human rights, and in particular the right to freedom
of assembly in Malawi.

Yours faithfully,

TIMOTHY PAGONACHI MTAMBO
Chairperson, Human Rights Defenders Coalition (HRDC)

GIFT TRAPENCE
Vice Chairperson, Human Rights Defenders Coalition (HRDC)

Copy:

1. The Chairperson, African Commission of Human and People’s Rights
2. Dean of Diplomatic Corps (Malawi)
3. Office of the President and Cabinet (Malawi)
4. Chief Secretary to the Malawi Government
5. Office of the Attorney General - Malawi
6. The Human Rights Commission - Malawi
7. Amnesty International
8. Malawi Law Society
10. The Speaker of United Kingdom Parliament
10. The European Parliament
11. Right Honorable Speaker of Malawi Parliament
13. The European Union
14 Chairperson of SADC
15 Frontline Human Rights Defenders
16. United Nations High Commissioner for Human Rights
17. The Human Rights Watch
18. The African Union
19. The Scottish Parliament
20. The Inspector General, Malawi Police Service
21. The Chief Justice, Malawi Judiciary
22. The Office of the Ombudsman, Malawi