



**Joint Submission to the UN Universal Periodic Review**

**22<sup>nd</sup> Session of the UPR Working Group**

**Republic of Malawi**

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**Submission by CIVICUS: World Alliance for Citizen Participation, NGO in General Consultative Status with ECOSOC**

**And**

**Centre for the Development of People**

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## **1. (A) Introduction**

- 1.1** CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizen's freedom of association are threatened.
- 1.2** The Centre for the Development of People (CEDEP) is a registered human rights organisation under the Trustees Incorporation Act of 1962 established in 2006. It aims at addressing the needs and challenges of sexual minorities in Malawi in the context of human rights, health and social development. The main goal is to create a legally and socially accepting environment where sexual minorities have an improved livelihood. The organisation's objectives are to advance the human rights of sexual minorities through advocacy and lobbying, to promote human rights and health of minority groups through civic education, training, capacity building, networking and research, and provide support services for the improvement of the welfare of sexual minorities in accordance with their needs.
- 1.3** The Centre for Human Rights and Rehabilitation (CHRR) is one of Malawi's leading human rights non-governmental organisations. It was founded in February 1995 as a non-profit making organization registered under the Trustees Incorporation Act of 1962. CHRR's vision is of a Malawi with a vibrant culture, which embraces the values of democracy, human rights and rule of law. CHRR mandate to advocate, protect and promote human rights, good governance and rule of law extends to SADC and Africa as a whole. Since 1998 CHRR enjoys the observer status with the African Commission on Human and Peoples' Rights.
- 1.4** During its initial examination under the Universal Periodic Review (UPR) in November 2010, Malawi fully accepted 71 recommendations including commitments to ensure that freedom of expression, the media and association are guaranteed without interference from the state. Malawi also supported recommendations to foster access to justice in order to guarantee the

protection and enjoyment of human rights by all citizens without discrimination.<sup>1</sup> However, despite these explicit commitments, freedom of expression, assembly and association came under attack particularly during the reign of former President Bingu wa Mutharika. Under the late President's regime, civil society organisations and journalists were openly labelled enemies of the state and were often associated with the political opposition. Threats to civil society organisations and the media emanated from the government, the police and those associated with the ruling Democratic Progressive Party (DPP).

- 1.5** The first few months of President Joyce Banda's administration that took over the leadership of Malawi in April 2012, saw marked improvements in civic space and the environment in which civil society operated. The President made a number of concessions at the beginning of her tenure and held meetings with representatives of the media. Her government also repealed a draconian amendment to Section 26 of the Penal Code, signed into law by her predecessor which granted the Information Minister unfettered powers to ban publications deemed to be "against public interest." President Banda's regime however became increasingly critical of the media particularly in the aftermath of the cash-gate scandal and rolled back some of the gains made in the respect of civil society freedoms during the first few months of her administration.
- 1.6** CIVICUS, CEDEP and CHRR express concerns about the environment in which human rights defenders and civil society activists and journalists operate particularly over the last four years, since Malawi's first UPR. Human rights defenders, civil society activists and journalists critical of government policies and actions have been intimidated, threatened and in certain instances killed in the exercise of their responsibilities. Officials of the ruling DPP party issued public statements warning activists and journalists to stop criticising the government or face reprisals. In certain instances, journalists were physically assaulted by government officials and armed gangs vandalised offices of civil society organisations. In a climate of fear and intimidation, some journalists particularly those working for the state media resorted to self-censorship for fear of reprisals from the government.
- 1.7** We are also concerned about restrictions on freedom of assembly despite constitutional guarantees and the use of violence to counter peaceful protests. Freedom of assembly was particularly threatened during protests against governance failures and the fuel crisis in 2011. Protests were violently dispersed leading to deaths of 20 protesters and several others were injured. Sadly, no one has been held responsible for the deaths of the protesters. Also, planned demonstrations were banned following injunctions sought by members of the ruling party.
  - In section B, CIVICUS, CEDEP and CHRR express concerns regarding judicial persecution, harassment and intimidation of human rights defenders and civil society activists.

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<sup>1</sup> UPR Info "Responses to recommendations, Malawi: review of working group: 1 November 2010, adoption in the plenary: 16 March 2012, [http://www.upr-info.org/sites/default/files/document/malawi/session\\_9\\_-\\_november\\_2010/recommendationstomalawi2011.pdf](http://www.upr-info.org/sites/default/files/document/malawi/session_9_-_november_2010/recommendationstomalawi2011.pdf), accessed, 27 August 2014.

- In section C, CIVICUS, CEDEP and CHRR highlight concerns related to restrictions on freedom of expression and attacks on journalists.
- In section D, CIVICUS, CEDEP and CHRR express concerns over attacks on freedom of assembly.
- In section E, CIVICUS, CEDEP and CHRR make a number of recommendations in the areas of concern listed.

## **2. (B) Concerns regarding judicial persecution, harassment and intimidation of members of Civil Society Organisations (CSOs).**

**2.1** Article 12 of the United Nations Declaration on Human Rights Defenders mandates member states to take necessary measures to protect human rights defenders. The International Covenant on Civil and Political Rights (ICCPR) to which Malawi is a party guarantees the freedoms of expression, association and assembly. Similarly, Article 15 (1) of the Constitution of Malawi provides for human rights and fundamental freedoms to be respected by the executive, legislature and judiciary and other organs of the government and its agencies. However, it is a matter of deep concern that human rights defenders and civil society activists have been persecuted, intimidated, harassed and threatened for doing their job. Senior government officials including members of the ruling DPP party often incited attacks on human rights defenders and civil society organisations by making derogatory statements against activists and likening them to enemies of the state.

**2.2** On 16 March 2012 John Kapito, Chair of the Malawi Human Rights Commission was arrested, detained and accused of producing and distributing subversive material, insulting President Mutharika and for having in his possession foreign currency without proper documents.<sup>2</sup> The police searched his house and car and accused him of possessing seditious material even though they did not find anything incriminating during their search.<sup>3</sup> The arrest was used as a ploy to prevent John Kapito from providing statements on Malawi's human rights record at the United Nations Human Rights Council (UNHRC) during the presentation of its human rights report.<sup>4</sup> The Malawi Human Rights Commission had previously released a report detailing the response of security forces during protests held in July 2011 in which 19 people were killed. Following his arrest, John Kapito was denied access to a lawyer, interrogated for several hours and eventually released on bail. Prior to his arrest, he had received several threats from government representatives who accused the Malawi Human Rights Commission for acting beyond its mandate.

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<sup>2</sup> Zodiak Online, "Kapito given bail, charged with sedition," 17 March 2012, [http://zodiakmalawi.com/index.php?option=com\\_content&view=article&id=4611%3Akapito-given-bail-charged-with-sedition&Itemid=124](http://zodiakmalawi.com/index.php?option=com_content&view=article&id=4611%3Akapito-given-bail-charged-with-sedition&Itemid=124), accessed 18 August 2014.

<sup>3</sup> Malawi Today, "Human Rights Watch Condemns Malawi," 25 March 2012, <http://www.malawitoday.com/news/124314-human-rights-watch-condemns-malawi>, <http://www.malawitoday.com/news/124314-human-rights-watch-condemns-malawi>, accessed 25 August 2014.

<sup>4</sup> Malawi Voice, "Kapito released on Police bail," 17 March 2012, <http://www.malawivoice.com/2012/03/17/kapito-released-on-police-bail-24386/>, accessed 27 August 2014.

- 2.3** On 13 February 2012, human rights lawyer Ralph Kasambara was arrested in Blantyre and charged with assault and intent to cause bodily harm. He was arrested after an attempt by unidentified men to attack his office was foiled. The attackers were in possession of a petrol bomb and were apprehended by security guards before they could target the offices. They confessed that they had received orders from the DPP to assault Ralph and attack his office.<sup>5</sup> The police arrived at the scene and arrested Ralph and the five security guards claiming they had received a tip-off that Ralph had kidnapped three people. On 14 February 2012, a court ruled that Ralph be released on bail of 20000MWK (approximately US \$ 50.3) and on a surety of 50000 MWK (approximately US \$ 125.8). Ralph was also ordered to present himself to the police once a week. Despite this ruling, the prison authorities refused to release him on the day requested by the court under the pretext that the ruling reached them late.<sup>6</sup>
- 2.4** On 24 January 2012, civil society activist Ben Chiza, was arrested in Lilongwe and accused of inciting demonstrations. He had proposed that street vendors should be educated on human rights issues after they stripped clothes off a group of women because they were wearing short skirts and trousers at the time. He was released on the same day without charges. Ben was initially arrested in October 2011 following protests held in front of the Parliament criticising President Mutharika's regime. He was threatened with death for his criticism of the government and his calls for reforms. In October 2011, he received a call from unidentified individuals who warned him of grave consequences if he continued advocating for change in Malawi.<sup>7</sup>
- 2.5** On 3 September 2011, the office of the Institute for Policy Interaction (IPI) in Blantyre was attacked with a petrol bomb and part of the building caught fire destroying documents. The IPI is an NGO created in 2001 with the objective of promoting participatory governance and the participation of citizens in decision making processes affecting them. IPI was part of a coalition of civil society organisations calling for government reforms. The police opened an investigation into the incident but an official of the ruling DPP party sarcastically noted that NGOs were burning their offices on purpose to destroy evidence of financial misappropriation. The IPI was particularly targeted because its Director Rafiq Hajat had been one of the leading figures in the pro-reform protests in July 2011.<sup>8</sup> Attacks on civil society organisations are incited by antagonistic public statements made by government representatives which encourage members of the DPP to intimidate civil

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<sup>5</sup> Nyasa Times, "Academicians Thandika, Msiska: Free Kasambara," 19 February 2012, <http://www.nyasatimes.com/2012/02/19/academicians-thandika-msiska-free-kasambara/>, accessed, 24 August 2014.

<sup>6</sup> Nyasa Times, "Bingu will be held responsible should anything happen to Kasambara," 18 February 2012, <http://www.nyasatimes.com/2012/02/18/bingu-will-be-held-responsible-should-anything-happen-to-kasambara/> accessed 27 August 2014.

<sup>7</sup> Nyasa Times, "Death threats on activists Chiza Mkandawire, Nyasulu, 1 November 2011, <http://www.nyasatimes.com/2011/11/01/death-threats-on-activists-chiza-mkandawire-nyasulu/>, accessed 29 August 2014.

<sup>8</sup> Malawi Today, "Arsonists torch Hajat's Institute for policy interaction," 2 September 2011, <http://www.malawitoday.com/news/28173-arsonists-torch-hajats-institute-policy-interaction-offices-chichiri>, accessed, 28 August 2014.

society. For instance, the office of Rafiq Hajat was petrol bombed and the house of activist Rev. Sembereka suffered the same fate.

- 2.6** On 25 July 2011, civil society activist and head of the Civil Society Coalition for Quality Basic Education (CSCQBE) Benedicto Kondowe was threatened with death for his human rights activities by unidentified individuals. The threats were issued following an interview he granted with the Malawi Institute of Journalism in which he discussed the police's violent response to the 20 July 2011 protests. The unidentified caller asked why he continued to expose the failings of government and noted that he had been trailing Benedicto, warning in the end that he will be sacrificed. Benedicto had been actively involved in the demonstrations and was physically assaulted by the police on 20 July and had to seek medical assistance because of injuries sustained. His organisation, CSCQBE is part of the Civil Society Grand Coalition for the Defence of Democracy and Good Governance and he was one of several civil society leaders invited for a meeting with the late President Mutharika during which they were warned that the DPP would halt all protests calling for the respect of the rights of Malawians.
- 2.7** Again on 20 March 2011, Undule Mwakasungula, Director of CHRR received threats from anonymous sources accusing him of disrespecting the president, bringing his name into disrepute and warned that his life was in danger. The threats were made following a petition written by CHRR and CEDEP and presented to the UN Special Rapporteur on the Situation of Human Rights Defenders in Geneva. President Mutharika had warned activists who had travelled to the UN Human Rights Council that they will have to explain reports on "so called" human rights violations in Malawi when they return from Council sessions. On 3 March 2011 armed men went to CHRR offices and asked for the residential address of Undule and on 9 March security agents visited his house in Karonga. Undule is an advocate of the rights of all Malawians and was one of many civil society activists threatened by the government following the July 2011 protests.<sup>9</sup> The threats he received were aimed at intimidating him and ultimately dissuade him from working on human rights issues.
- 2.8** Others targeted for engaging UN processes are Levi Mvula from CHRR and Gift Trapence from CEDEP. On 16 March 2011 the two activists had issued a statement on the state of human rights and governance challenges in Malawi at the UN Human Rights Council session. President Mutharika responded by stating that civil society organisations were operating contrary to the interests of the country because they briefed the international community on human rights issues in Malawi. The human rights defenders were operating under the Civil Society Grand Coalition for the Defence of Democracy and Good Governance. Public statements from the State House denouncing civil society activists placed activists at risk as they elicit reprisals from members of the ruling DPP party.

### **3. (C) Concerns regarding restrictions on freedom of expression and attacks on journalists**

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<sup>9</sup> Newstime Africa, "Malawi government threatens human rights leader as Undule Mwakasungula goes into hiding," 29 July 2011, <http://www.newstimeafrica.com/archives/21573>, accessed, 28 August 2014.

- 3.1** Article 34 of Malawi's constitution guarantees the right to freedom of opinion and Article 35 states that "every person shall have the right to freedom of expression." In addition, Article 36 makes provisions for the press to freely report and publish at home and abroad and "to be accorded the fullest possible facilities for access to public information." Furthermore, Article 9 of the African Charter on Human and Peoples' Rights (ACHPR) to which Malawi is a party provides for citizens to express and disseminate opinions and views within the law. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of expression and opinion. Despite these enabling provisions, in practice, laws like the Protected Flag, Emblems, and Names Act (1967) and Printed Publications Act (1947) restrict these freedoms and have been used in the past to target journalists.
- 3.2** On 22 October 2013, Sylvester Namiwa a journalist working for Galaxy FM Radio was arrested after a live broadcast in which he disclosed the names of persons and companies implicated in the cash-gate corruption scandal – the biggest financial scandal in Malawi's history which implicated senior government officials. The authorities charged him with releasing information that could instigate violence.<sup>10</sup> He was later freed on bail. Reporting on the scandal was considered sensitive by the government as allegations of misappropriation of millions of US dollars by government officials, led to the withdrawal of donors and elicited strong criticisms from Malawians. Journalists should be able to report on issues affecting Malawians without any fear of intimidation or harassment from the authorities.
- 3.3** On 25 August 2013, Raphael Mlozoa, a journalist from Zodiak Broadcasting Station (ZBS) was physically attacked by security agents of Malawi's Economic Planning and Development Minister Ralph Jooma. The attack was in response to a report filed by Raphael stating that the Minister had been assaulted by members of the Muslim community at the main Mosque in Mangochi.<sup>11</sup> The Minister's body guards accused Raphael of releasing false information about the minister. He was hospitalised at Mangochi District Hospital following the attack.
- 3.4** On 30 May 2013, Thoko Chikondi, a journalist working for the Nations Publications Limited was assaulted at the Parliament building by Youngson Chilinda, the Parliament's chief security officer. She was taking pictures of rights advocate, John Kapito after he presented a petition to the national assembly and Youngson Chilinda thought Thoko was taking pictures of him, claiming she had not requested for permission. Thoko who suffered from bruises in her back received treatment at Kamuzu Central Hospital. On 1 June 2013 Youngson was arrested, detained and released on bail on 4 June. Attacks on journalists must be condemned at all times and we commend the authorities for holding Youngson responsible for the crime committed.

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<sup>10</sup> All Africa, "Southern Africa: MISA Malawi condemns the arrest of Galaxy FM Radio journo Sylvester Namiwa," 22 October 2013, <http://allafrica.com/stories/201310240921.html>, accessed 25 August 2014.

<sup>11</sup> The Malawian "Malawi Minister assaults journalist over Muslim story," 28 August 2013, <http://www.themalawian.com/malawi-minister-assaults-journalist-over-muslims-story-misa/>, accessed 10 August 2014.

- 3.5** On 5 January 2013 Anthony Masamba, journalist and Bureau Chief of the Malawi Institute for Journalism FM (MIF FM) was attacked by the head of the Confederation of Chamber of Commerce and Industry (MCCCI), Chancellor Kaferapanjira during an interview.<sup>12</sup> The journalist had questioned Chancellor Kaferapanjira about concerns that the government overspent its 2012/2013 national budget before the end of the first half of the fiscal year. Chancellor Kaferapanjira punched Anthony and destroyed his recorder. On 11 January 2013, Chancellor Kaferapanjira was arrested by police in Lilongwe and charged with common assault and malicious damage. He denied the charge, maintained that the journalist wanted to ruin his career and was eventually granted bail.
- 3.6** Again on 15 October 2012 police arrested Justice Mponda, an online activist and journalist from the *Malawi Voice*. Justice was accused of insulting President Joyce Banda and for libel. He was charged under the notoriously reverting Protected Names, Flags and Emblems Act (1967). He was arrested for writing online pieces for the *Malawi Voice*. The charges were altered to publishing incorrect information which could instil fear and cause harm among Malawians.<sup>13</sup> He was freed by a judge during his court appearance in February 2013 after the state failed to provide witnesses for the case.<sup>14</sup> The state explained that its witnesses were not ready to testify in the case. The arrest of Justice Mponda was an attempt by the state to intimidate him and prevent him from objectively reporting on news items.
- 3.7** On 8 March 2012, the State House issued a strongly worded statement warning the media and civil society organisations against insulting the president. The statement among other things noted that “it is a pity that some civil society organisations and media houses find demeaning, insulting and accusing the President as a scoop to merit themselves. It should be obvious that such insults, accusations, derogatory statements and ill comments about our head of state are both a shame in the eyes of the international community.” The statement threatens dissenters noting that the government “monitors carefully” social networks that are “hostile and probably careless in demeaning the state president.” It also noted that it was found “unacceptable” phone-in radio programmes that offer a “platform for callers to castigate or insult the Head of State.” Such statements from the highest authority are a threat to fundamental freedoms and exposes journalists and activists making them vulnerable to attacks from government supporters.
- 3.8** On 12 March 2012, a few days after the release of the statement by State House, Anthony Kasunda, Chair of the Media Institute of Southern Africa (MISA) – Malawi received threats from unidentified individuals following a

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<sup>12</sup> Nyasa Times “MCCCI boss roughs up Malawi journalist for MIJ radio, 6 January 2013, <http://www.nyasatimes.com/2013/01/06/mccci-boss-roughs-up-malawi-journalist-for-mij-radio/>, accessed 26 August 2014.

<sup>13</sup> Malawi Voice, “Namisa, NGOs condemn the arrest of Malawi Voice reporter – “its unconstitutional and retrogressive,” 16 October 2012, <http://www.malawivoice.com/2012/10/16/namisa-ngos-condem-the-arrest-of-malawi-voice-reporter-its-unconstitutional-and-retrogressive-48699/>, accessed, 28 August 2014.

<sup>14</sup> Nyasa Times “Malawi Court discharges online journalist Mponda: ‘arrested wrong person,’ 8 February 2013, <http://www.nyasatimes.com/2013/02/08/malawi-court-discharges-online-journalist-mponda-arrested-wrong-person/>, accessed 16 August 2014.



response from MISA to the statement.<sup>15</sup> MISA's response had called on the government to adhere to provisions in the constitution which guarantee freedom of expression and media freedoms. Of equal concern is the fact that following the release of the statement from State House, Frank Mwenefumbo the Youth Director for the DPP urged citizens to refrain from advertising in, reading or buying newspapers which criticised the government.

**3.9** On 24 September 2011, blogger and student activist Robert Chasowa was found dead at the polytechnic campus where he studied after he had received threats. He wrote critical pieces about President Mutharika and proposed that the government institute democratic reforms. Following his death, the police maintained that he had committed suicide but an independent report from a Commission of Inquiry created by President Joyce Banda confirmed that he had been murdered.<sup>16</sup> The Commission noted in its report that Robert had been targeted by the police for his activities with the Youth for Freedom and Democracy platform and that officials of the ruling DPP were equally wary of his critical and pro-reform articles published by the Youth For Freedom and Democracy platform. The report further confirmed that Robert was abducted, beaten to death and his body taken back to the Polytechnic campus.<sup>17</sup> We laud the efforts of President Banda in setting up the Commission and for the fact that after the release of its findings six people implicated in the death of Robert were arrested. Unfortunately, justice has not been served and family of Chisowa has not been compensated.

**3.10** Following the death of Robert Chisowa, the government increased its restrictions on journalists working on the case. George Kasakula, editor of the *Weekend Nation*, was interrogated by the police after publishing a story, implicating the police in the murder of Robert Chisowa. The police demanded that he disclose his sources and present records of interviews he conducted while working on the story. In a related incident, Phillip Pemba, a journalist working for the *Nation* was intimidated with death threats after releasing reports on Chisowa's death.

#### **4. (D) Concerns over restrictions on freedom of assembly**

**4.1** Article 21 of the ICCPR guarantees the right to peaceful assembly while Article 22 guarantees the right "to freedom of association with others including the right to form and join trade unions for the protection of their interests." In addition, Article 38 of the Malawi constitution states that "every person shall have the right to assemble and demonstrate with others peacefully within the borders of Malawi." Despite these progressive provisions, the authorities in Malawi systematically dispersed peaceful protests particularly those organised in 2011.

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<sup>15</sup> Media Institute of Southern Africa, "MISA-Malawi Chair receives threats over stance on media freedom," <http://www.misa.org/misa-chapters/malawi/item/486-misa-malawi-chair-receives-threats-over-stance-on-media-freedom>, accessed 25 August 2014.

<sup>16</sup> Nyasa Times, "Police shield regime thugs over Chasowa murder – reports," 5 October 2011, <http://www.nyasatimes.com/2011/10/05/police-shield-regime-thugs-over-chasowa-murder-reports/>, accessed 14 August 2014.

<sup>17</sup> The Malawian Voice, "The Chasowa Commission of Report," <http://www.malawivoice.com/2012/10/23/the-chasowa-commission-of-report-17966/>, 23 October 2013, accessed 26 August 2014.

- 4.2** On 14 October 2011 human rights defenders Habiba Osman, Billy Mayaya, Brian Nyasulu, Ben Chiza Mkandawire and Comfort Chitseko were arrested for participating in demonstrations in front of Parliament. The protesters had called for the investigation of the death of student activist Robert Chasowa and for the President to organise a referendum for elections to be held early.<sup>18</sup> They were charged with participating in an illegal protest and detained for five days before they were released on bail.
- 4.3** On 20 July 2011, during demonstrations calling for economic and democratic reforms held in different parts of Malawi, the police used live ammunition on protesting crowds killing 20 protesters.<sup>19</sup> The protesters had initially been granted permission to hold the protests but a day before they began, members of the DPP successfully obtained a court order to prevent the protests. On the same day the police physically assaulted organisers of the protests as they waited in a church building for feedback from discussions between their lawyers and the authorities to rescind the order so the protests could go ahead. Those in the church building were beaten and threatened with death by the police who also accused them of destabilising the country. Further protests were planned for mid-August 2011 to observe the deaths of the protesters killed in July but DPP officials successfully obtained an injunction from the High Court which banned the protests.
- 4.4** On 20 and 21 July 2011 live ammunition and tear gas were used against protesters who had convened in the major cities of Blantyre, Lilongwe and Mzuzu to denounce the fuel shortages and stringent economic policies initiated by the state. Some journalists and reporters covering the demonstrations were assaulted, arrested and detained. The Communications Regulatory Authority imposed a blackout on private media agencies – Capital FM, Joy Radio and Zodiak Broadcasting Station to prevent them broadcasting the demonstrations. The ban on these private media agencies was imposed because according to the authorities, coverage of the protests encouraged violence. A day before the demonstrations a group of DPP supporters patrolled in the City of Blantyre in a DPP party vehicle with Pang knives (Machetes) threatening that they were going to deal with anybody demonstrating against government. Till date none has been held responsible for their actions.
- 4.5** On 14 February 2011, a march organised by civil society to protest against the fuel crisis and corruption in government was halted by the police, despite the fact that the organisers of the demonstrations had sought for permission two days before as required by Malawian law. The organisers were informed that the reasons given to justify the protests were not lawful. Following the cancellation of the march, President Mutharika held a meeting with representatives of several civil society organisations during which he threatened to galvanise members of the ruling DPP to halt protests which criticised his leadership.

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<sup>18</sup> Malawi Today, “Malawi urged to release activists arrested for protesting,” 18 October 2011, <http://www.malawitoday.com/news/65502-malawi-urged-release-activists-arrested-protesting>, accessed, 28 August 2014.

<sup>19</sup> Nyasa Times, “Bar rights committee condemns Mutharika,” 2 August 2011, <http://www.nyasatimes.com/2011/08/02/bar-rights-committee-condemns-mutharika/>, accessed 25 August 2014.

## **5. (E) Recommendations to the Government of Malawi**

CIVICUS, CEDEP and CHRR urge the newly elected government of President Peter Mutharika to create an enabling environment for civil society to operate in accordance with the rights enshrined in the Malawian Constitution, the ACHPR, ICCPR and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be ensured: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made.

### **5.1 Regarding judicial persecution, harassment and intimidation of members of Civil Society Organisations (CSOs)**

- All cases of threats, intimidation and harassment of representatives of civil society and human rights defenders should be fully investigated with a view to bringing the perpetrators to justice.
- Guarantee at all times, the physical and psychological integrity of all civil society activists and human rights defenders.
- All due process in accordance with Article 14 of the ICCPR should be followed for all detained persons including representatives of civil society.
- Ensure that the provisions of the UN Declaration on Human Rights Defenders are adhered to, particularly Article 12 which states 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 present declaration.”
- Guarantee the freedom of human rights defenders to submit information on the state of human rights to human rights bodies and participate in processes set by UN Special Procedures without fear of intimidation or harassment by the government.

### **5.2 Regarding restrictions on freedom of expression and attacks on journalists**

- Threats to journalists and representatives of the media should be fully investigated with a view to bringing the perpetrators to justice.
- The government of Peter Mutarika should desist from making public threats to journalists and representatives of the media.
- Attacks on and threats to journalists and dissenters should be publicly condemned by senior government officials to ensure protection by law enforcement agencies.

- Government representatives should avoid the tendency to discredit and stigmatise the legitimate activities of journalists and guarantee that they operate in a safe environment without any fear of reprisals from government and officials of the ruling party for criticising government policies of actions.

### **5.3 Regarding restrictions on freedom of assembly**

- Best practices on freedom of peaceful assembly should be adopted by the Malawian Government.
- Security forces in charge of crowd control should be equipped with non-lethal weapons and provided training across the board on humane means of crowd control as well as on the UN Basic Principles on the use of Force and Firearms.
- Recourse for judicial review and effective remedy should be provided including compensation in cases of unlawful denial of the right to freedom of assembly by state authorities.

### **5.4 Regarding access to UN Special Procedures and Mandate Holders**

- A standing invitation should be extended to the UN Special Procedures, particularly to the Special Rapporteur on Human Rights Defenders, Special Rapporteur on Freedom of Expression, and Special Rapporteur on Freedom of Peaceful Assembly and Association.