



# MALAWI

## AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 36<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, 4-15 MAY 2020

### FOLLOW-UP TO THE PREVIOUS REVIEW

#### **Persons with albinism**

Malawi accepted five recommendations to ensure the protection of persons with albinism and to combat discrimination against them.<sup>1</sup> However, according to research by Amnesty International and our partners, since 2014 a total of 22 people with albinism have been killed in Malawi. Only 30% of the reported cases of attacks against people with albinism have been concluded, including due to weaknesses in the criminal justice system and inadequate protection systems for vulnerable members of society (see below for details).

#### **Prison conditions**

Malawi committed to improving prison conditions, including to reducing overcrowding and pre-trial detention,<sup>2</sup> yet according to the Prison Inspectorate the prisons remain dilapidated, overcrowded and unfit for human habitation.<sup>3</sup>

#### **Human rights defenders**

Malawi accepted three recommendations to investigate threats and attacks against human rights defenders and to create an enabling environment for their work,<sup>4</sup> yet Amnesty International has continued to document such attacks, including in the context of the May 2019 elections (see below for details).

### THE NATIONAL HUMAN RIGHTS FRAMEWORK

#### **SHRINKING CIVIL SOCIETY SPACE, FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY**

##### **Access to Information bill**

In December 2016, Malawi passed the Access to Information bill after a long process with various stakeholders, led by the NGO, MISA Malawi, the Malawi chapter of the Media Institute of Southern Africa. The new Act is generally progressive; however, it does not have a substantive whistleblower protection provision. This would be an important provision to include in the Act as Malawi continues to fight allegations of corruption and to promote accountability. The Act was meant to provide for the right to access information and to promote transparency and

<sup>1</sup> Report of the Working Group on the Universal Periodic Review, Malawi, A/HRC/30/5, recommendations 110.48 (France), 110.73-74 (Italy, Austria), 110.99 (Norway), 111.11 (Sierra Leone).

<sup>2</sup> UN Doc. A/HRC/30/5, recommendations 110.78-82 (Germany, Spain, Angola, Austria, Cabo Verde) and 110.104 (Niger).

<sup>3</sup> [mwnation.com/justice-system-rotten-report/](http://mwnation.com/justice-system-rotten-report/)

<sup>4</sup> UN Doc. A/HRC/30/5, recommendations 110.109-110 (Austria, Botswana), 112.8 (Tunisia).

accountability of public officials. However, Malawi has recently embarked on a process to implement national civil registration which has put the personal details of many users at risk.

### **Post-election protests**

Following the elections in Malawi on 21 May 2019 to elect the president, the national assembly and local government councilors, the main opposition parties contested the election outcome. There were allegations that the Chairperson of the Malawi Electoral Commission had altered the results of the election in favour of the incumbent, President Mutharika. The Malawi Congress Party (MCP) stated that the election results were not a genuine reflection of the will of the people. MCP spokesman Eisenhower Mkaka said his party had turned to the courts because of “very glaring irregularities” on results sheets. He alleged that some documents showed “the same handwriting coming from different polling stations which are miles apart,” and added that there was “a lot of tippex’ing”, showing that the results had been altered.<sup>5</sup>

The President of Malawi is elected using the first-past-the-post system. The candidate that receives the most votes is the winner of the election. President Mutharika was narrowly re-elected with 38.57% of the vote, while his closest rival, Malawi Congress Party (MCP) leader Lazarus Chakwera secured 35.41% of the vote.

Since the May tripartite elections, there has been a wave of demonstrations organized by the Human Rights Defenders Coalition (HRDC) against what they consider to be mismanagement of elections by the Malawi Electoral Commission. The government tried to stop these demonstrations through decrees as well as seeking the intervention of the courts. On 8 August 2019 Malawi’s Constitutional Court began hearing an application filed by the MCP and United Transformation Movement to overturn the results of the presidential elections held three months earlier, over alleged election fraud. MCP leader Chakwera alleged he was the rightful winner of the election, which it was claimed he lost by 159,000 votes and described the results as “daylight robbery.”<sup>6</sup>

On 5 August 2019, the High Court dismissed the government’s request for an injunction against the post-election protests to demand the resignation of Electoral Commission Chair Jane Ansah. This was after the Human Rights Defenders Coalition had planned protests at the airport and border crossings. The Attorney General then appealed to the Supreme Court of Appeal (SCA), which overturned the High Court decision and approved a 14-day ban on protests. On 23 August the authorities deployed soldiers on the streets of Lilongwe to quell the protests. In August about 25 claimants sued the leaders of the Human Rights Defenders Coalition, including Timothy Mtambo, Dr. Billy Mayaya and Gift Trapence, for having caused damage to their property during protests.

On 30 September, the Supreme Court refused to grant an application for the suspension of the ongoing wave of protests. Supreme Court Justice Chikopa ruled that insofar as the application was based on recurrence of violence and criminality linked to the protests, there were better ways of dealing with that than a blanket ban on protests. Judge Chikopa concluded that the right to demonstrate set out in the Malawi Constitution was unconditional and the state could not impose blanket bans or use the courts to ban the protests. He further stated that the state should allocate resources to the police to effectively manage the public demonstrations.

### **Suspension of phone-in programs**

On 7 June 2019, the Malawi Communications Regulatory Authority (MACRA) suspended phone-in radio programs alleging that “some broadcasters” were indulging themselves in careless and unethical coverage of post-election events.<sup>7</sup> People phoning in to the radio stations would discuss the election outcome, with many expressing their displeasure with the manner in which the election had allegedly been handled. The ban on these programs was announced after the Human Rights Defenders Coalition embarked on its one-million-man march to demand the resignation of the Electoral Commission chair, Jane Ansah, on allegations of electoral fraud. MISA Malawi stated that the decision to suspend the phone-in programs was a violation of media freedom and the right to freedom of expression and applied for an injunction to stop MACRA from effecting the ban. On 25 September 2019,

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<sup>5</sup> [mg.co.za/article/2019-05-28-00-malawis-mutharika-re-elected-amid-vote-rigging-claims](http://mg.co.za/article/2019-05-28-00-malawis-mutharika-re-elected-amid-vote-rigging-claims)

<sup>6</sup> [www.timeslive.co.za/news/africa/2019-05-31-malawian-opposition-goes-to-court-over-vote-robbery/](http://www.timeslive.co.za/news/africa/2019-05-31-malawian-opposition-goes-to-court-over-vote-robbery/)

<sup>7</sup> [www.bizmalawionline.com/macra-still-pauses-the-phone-ban/](http://www.bizmalawionline.com/macra-still-pauses-the-phone-ban/)

Lilongwe High Court Justice Ruth Chinangwa lifted the ban on phone-in radio programs allowing broadcasters to resume their radio shows. The judge held that the ban was a violation of the constitutional rights to media freedom.<sup>8</sup>

### **Death in custody**

On 19 September 2019, the authorities deployed members of the Malawi Defence Forces to quell public protests in Karonga and Mzuzu. About 18 protesters were arrested and detained at the police station. One of the protesters Justin Phiri died on 26 September of infected wounds which were not treated. His lawyer, Precious Kondowe, confirmed that he had been severely assaulted by the soldiers during the protests and that the police failed to take him to the hospital and that he died in police custody.

### **NGO Act Amendment Bill**

In December 2018, non-governmental organizations (NGOs) in Malawi protested against the NGO Act Amendment Bill which seeks to establish a new regulatory authority for NGOs, mandated to impose heavy fines and prison sentences on NGOs and their directors if they breach the law.<sup>9</sup> Currently, NGOs elect members to the NGO Board of Malawi which regulates NGO operations. Under the new law, the NGO Board would be replaced by an NGO Authority, whose members would be appointed by a cabinet minister. The Bill is considered by NGOs in Malawi as an attempt to restrict civil society space and control civil society activities. They have successfully challenged the Bill in court and Parliament has been served with an injunction preventing it from debating the Bill until it has been reviewed by the cabinet and resubmitted to the National Assembly. Amnesty International is concerned that the Bill, in its current form, violates the right to freedom of association and is an attempt by the authorities to clampdown on the activities of civil society organizations.

## **PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

### **Persons with albinism**

Malawi is home to 134,636 people with albinism, a condition characterized by a lack of pigmentation in the skin, hair and eyes.<sup>10</sup> Over the past five years, there has been an increasing number of abductions and killings of people with albinism, stemming from prejudice and a lack of understanding of the condition.<sup>11</sup> In many cases people with albinism have been killed for ritualistic purposes and a superstitious belief that their body parts would bring luck in business and politics. The situation is exacerbated by inadequate resources to deal with these crimes, leading to a culture of impunity. Only 30% of investigations into reported attacks against people with albinism have been concluded, according to statistics from the Malawi Police Service and the Ministry of Justice and Constitutional Affairs.<sup>12</sup> The plight of people with albinism has resulted in violations of their human rights to life, human dignity, personal security and freedom from torture and other ill-treatment. The abductions and killings of people with albinism became an issue in the elections in May 2019 following a campaign launched by NGOs to urge the authorities and political candidates to commit to the protection of people with albinism.

In January 2019, 60-year-old Yassin Kwenda Phiri was gruesomely murdered in his house in Nkhata Bay while his 9-year-old son George watched helplessly. Two men cut off his father's arms with a knife and removed his intestines with their bare hands. Yassin's murder happened less than a year after another gruesome killing of

<sup>8</sup> [www.nyasatimes.com/malawi-phone-in-programmes-to-resume-as-court-lifts-ban-macra-erred/](http://www.nyasatimes.com/malawi-phone-in-programmes-to-resume-as-court-lifts-ban-macra-erred/)

<sup>9</sup> [www.voanews.com/africa/malawi-ngos-protest-amended-ngo-bill](http://www.voanews.com/africa/malawi-ngos-protest-amended-ngo-bill), accessed 1 October.

<sup>10</sup> 2018 Malawi Population and Housing Census Main Report, National Statistical Office, May 2019, [www.nsomalawi.mw/images/stories/data\\_on\\_line/demography/census\\_2018/2018%20Malawi%20Population%20and%20Housing%20Census%20Main%20Report.pdf](http://www.nsomalawi.mw/images/stories/data_on_line/demography/census_2018/2018%20Malawi%20Population%20and%20Housing%20Census%20Main%20Report.pdf)

<sup>11</sup> See Amnesty International Report, We are not animals to be hunted or sold.

<sup>12</sup> [allafrica.com/stories/201901150504.html](http://allafrica.com/stories/201901150504.html), See also Amnesty International Report, Towards Effective Criminal Justice System for People with Albinism in Malawi.

Macdonald Masambuka, aged 22, in March 2018. His butchered body was found in April 2018 with his legs and arms missing. A catholic priest, a medical officer and a police officer are among 12 people currently being prosecuted in the High Court on various charges, including murder and causing harm to persons with disabilities, in the Masambuka case. In July 2018, Joseph Kachingwe, a 12-year-old boy with albinism was abducted in Phalombe and has never been found. Eight people were arrested on charges of his murder and are currently on trial in the High Court.

According to research carried out by Amnesty International and the Association of People with Albinism in Malawi (APAM), a total of 22 people with albinism have been killed in Malawi since 2014. In the same period, APAM also recorded a total of 163 other crimes committed against people with albinism. The authorities face challenges in combating and preventing these attacks due to weaknesses in the criminal justice system, poor investigative and forensic capacity by the Malawi Police Service, and inadequate protection systems for vulnerable members of society.

While some cases were taken to court in 2017 and 2018, the authorities only started to prosecute cases of murder of people with albinism in 2019 due to inadequate resources and staff shortages in the office of the Director of Public Prosecutions and the legal aid board. This has been welcomed by most stakeholders concerned by impunity in murder cases involving people with albinism.

Amnesty International is concerned, however, that the courts have imposed the death penalty in several cases where the perpetrators were found guilty of murder.<sup>13</sup> In May 2019, the High Court sentenced Willard Mikaele<sup>14</sup> to death for the strangling and ritualistic dismemberment of Mphatso Pensulo, who in 2017, at age 19, had been lured into his killer's house with a promise of juice and biscuits. His murderer was a rich businessman who had been told by "a medicine man" that killing a person with albinism was a path "to get rich fast", according to Justice Maclean Kamwambe.<sup>15</sup> In another case, in 2015, Douglas Mwale, Sophie Here and Fontino Folosani killed Prescott Pepuzani, with a metal bar and a hoe handle before chopping off his hands and legs and burying him in Mwale's garden in Mchinji district, Central Malawi. They were found guilty of murder by the High Court on 15 August 2019.

### **Unlawful killings**

Police brutality and excessive use of force in the form of unlawful killings and torture persist in Malawi. According to a report by the Centre for Human Rights Education, Advice and Assistance,<sup>16</sup> over the past three years the police have unlawfully killed over 48 individuals suspected or convicted of committing serious offences such as murder and armed robbery. There have also been deaths in police custody due to harsh and life-threatening conditions in detention centres. In the same period, the media reported that over 43 suspects had died at the hands of the police<sup>17</sup> and that about 70 suspicious deaths have occurred without inquest hearings being conducted.<sup>18</sup>

Between May and June 2018, at least 10 suspects in robbery cases—six in Ntcheu and four in Blantyre—died in what appears to be police shootings. Ntcheu Police spokesperson Hastings Chigalu said the bodies of four of the "Ntcheu Six"—identified as Christopher Mulomba, Wilson Gosten, Edwin Lungu and Defuleya Kapusa—were collected by their relatives whereas the remaining two bodies, were buried by other prisoners.

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<sup>13</sup> Amnesty International is opposed to the use of the death penalty as a form of punishment for all crimes, including serious offences.

<sup>14</sup> Republic v Willard Mikaele, Homicide Case No. 238 of 2018

<sup>15</sup> [www.telegraph.co.uk/news/2019/05/05/malawi-man-killed-albino-get-rich-sentenced-death/](http://www.telegraph.co.uk/news/2019/05/05/malawi-man-killed-albino-get-rich-sentenced-death/), accessed 2 October.

<sup>16</sup> Operation Elimination: An investigation into police extra-judicial killings in Malawi.

<sup>17</sup> [mwnation.com/are-police-on-killing-spree](http://mwnation.com/are-police-on-killing-spree)

<sup>18</sup> [mwnation.com/no-inquests-on-70-suspicious-deaths/](http://mwnation.com/no-inquests-on-70-suspicious-deaths/)

In February 2019, Bulela Lule, aged 44, was arrested on charges of abducting a person with albinism and appeared in court on 21 February jointly charged with five other people. Bulela Lule later died in a police cell. The post-mortem report released on 12 April revealed that Bulela had been electrocuted and had sustained injuries on his head, buttocks and tummy. The injuries were consistent with acts of torture.

### **Attacks on human rights defenders**

In 2018 and 2019, human rights defenders and activists in Malawi faced threats in the context of the tripartite elections in May 2019. Human rights defenders from the Human Rights Defenders Coalition, who organised and led the demonstrations against alleged electoral fraud, were attacked by ruling party youth cadres, intimidated and subjected to trumped-up charges by the authorities.

Timothy Mtambo, Chairperson of the Human Rights Defenders Coalition and Executive Director of the Centre for Human Rights and Rehabilitation (CHRR), has increasingly been receiving death threats by ruling party cadres. There have also been petrol bombings of his residence and the homes of his close relatives, and car accidents staged by suspected government operatives, including ruling party youth cadres. In 2018, CHRR's offices were petrol-bombed and the security guards were tortured to force them to reveal Mr. Mtambo's home address.

On 25 September 2019, ruling Democratic Progressive Party (DPP) youth cadres hacked with machetes human rights activist and protest leader Billy Mayaya. He sustained serious injuries to his head and is currently receiving treatment. Several other activists were attacked on the same day by DPP cadets. The police joined in by tear-gassing the demonstrators and when some sought refuge inside Queen Elizabeth Central Hospital, the police fired teargas inside the hospital. The suspected perpetrators were not arrested although the police were present during the attack.

In early July 2019, LGBTI rights activist and Vice Chairperson of the Human Rights Defenders Coalition Gift Trapence and Reverend McDonald Sembereka were released by a magistrates' court following their arrest on charges of fraud connected to a now-resolved funding dispute with UNAIDS. Amnesty International is concerned that they were targeted for prosecution on trumped-up charges to silence them and stop them from organising further demonstrations.

## **RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

### **Amnesty International calls on the government of Malawi to:**

#### *Freedom of expression and peaceful assembly*

- Respect, protect, promote and fulfil the rights to freedom of expression, peaceful assembly and allow people to freely participate in demonstrations without undue interference, attacks or fear of reprisals;
- Ensure the police and army do not use excessive force in managing public assemblies;
- Enact a law to protect whistle-blowers in the context of the government's fight against corruption and promotion of accountability;
- Enact legislation to protect people's personal data and guarantee their right to privacy.

#### *Persons with albinism*

- Protect people with albinism from further attacks by providing secure houses and expediting prosecution of suspected perpetrators of such attacks;
- Commute death sentences to life imprisonment for those convicted of killing persons with albinism;
- Conduct community education programs to debunk superstitious beliefs that body parts of people with albinism bring luck in business and politics;
- Allocate adequate resources to the Police Services, including to improve their forensic investigation skills

and facilitate effective community policing.

*Unlawful killings*

- Ensure that all suspects are treated with dignity by the police and prison officers upon arrest and in detention and protect them from any form of torture and other ill-treatment;
- Thoroughly, impartially and effectively investigate all cases of torture, unlawful killings and deaths in police custody and ensure that officers suspected to be responsible are held accountable in fair trials and without recourse to the death penalty.

*Civil society space and NGO Act*

- Ensure the amendments to the NGO Act are in line with international standards on the right to freedom of association, to ensure the independence of civil society.

*Attacks on human rights defenders*

- Ensure that human rights defenders are able to carry out their work without fear of physical attacks, reprisals or judicial harassment;
- Thoroughly, impartially and effectively investigate all attacks against human rights defenders and prosecute suspected perpetrators in fair public trials.