



## MALAWI

### JOINT SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW

### 36<sup>TH</sup> SESSION OF THE UPR WORKING GROUP

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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

And

Centre for Human Rights and Rehabilitation

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## **1. Introduction**

- 1.1** CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has members in more than 180 countries throughout the world.
- 1.2** Centre for Human Rights and Rehabilitation (CHRR) is one of the leading human rights and good governance civil society institutions in Malawi. Founded in February 1995 as a non-profit organisation registered under the Trustees Incorporation Act of 1962, CHRR envisions a vibrant Malawi culture that embraces the values of democracy and human rights.
- 1.3** Centre for the Development of People (CEDEP) is a human rights organisation registered in Malawi. Founded in 2006, CEDEP envisions a society that values human diversity and upholds social justice and wellness for all.
- 1.4** In this document, the three organisations examine the Government of Malawi's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Malawi's fulfilment of the rights to the freedoms of association, peaceful assembly and expression, and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in 5 May 2015. To this end, we assess Malawi's implementation of recommendations received during the 2<sup>nd</sup> UPR cycle relating to these issues and make a number of recommendations.
- 1.5** During the 2<sup>nd</sup> UPR cycle, the government received 53 recommendations relating to the space for civil society (civic space). Of these recommendations, 22 were accepted and 31 were noted. An evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrate that the government has only partially implemented one recommendation relating to civic space, by adopting a Law on Access to Information.<sup>1</sup>
- 1.6** The government has persistently failed to address unwarranted restrictions on civic space since its last UPR examination, and acute implementation gaps were found regarding the rights to the freedoms of association, peaceful assembly and expression as well as issues relating to protection of HRDs. We remain alarmed that Malawi has failed to bring its criminal code into compliance with the principles of the

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<sup>1</sup> See: "Access to Information Act, 2017"; February 2017; Available at <https://malawilii.org/mw/legislation/act/2017/13>

International Convention of Civil and Political Rights (ICCPR) regarding criminal penalties for same-sex conduct, despite promising to uphold these agreements.

- 1.7** We are deeply concerned by persistent intimidation, harassment and threats against HRDs and their families. HRDs have received death threats for their human rights activities and others have been arrested and assaulted for protesting peacefully about human rights violations and corruption.<sup>2</sup> HRDs have also been targeted with violence as in at least two instances when petrol bombs were thrown at the homes and property of an HRD.<sup>3</sup> Others have been subjected to unscrupulous judicial processes and excessive fines, and unwarrantedly accused of corruption.<sup>4</sup>
- 1.8** We are further alarmed by the increasingly repressive environment in Malawi fuelled by the use of violence against peaceful protesters, the militarisation of the state and high levels of impunity enjoyed by perpetrators of human rights violations.
- 1.9** As a result of these issues, civic space in the Malawi is currently classified as obstructed by the CIVICUS Monitor.<sup>5</sup>
  - Section 2 of this submission examines Malawi's implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of association.
  - Section 3 examines Malawi's implementation of UPR recommendations and compliance with international human rights standards related to the protection of HRDs, civil society activists and journalists.
  - Section 4 examines Malawi's implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of expression, independence of the media and access to information.
  - Section 5 examines Malawi's implementation of UPR recommendations and compliance with international human rights standards related to the freedom of assembly.
  - Section 6 contains a number of recommendations to address the concerns raised and to advance implementation of recommendations under the 2<sup>nd</sup> cycle.
  - An annex of implementation of 2<sup>nd</sup> cycle UPR recommendations related to civic space can be found in Section 7.

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<sup>2</sup> See: "Police teargas Malawi opposition protest demanding president resigns", July 2019. Available at <https://www.africanews.com/2019/06/07/police-teargas-malawi-opposition-protest-demanding-president-resigns/>

<sup>3</sup> See: "CSOs condemn cowardly petrol bomb attacks Malawi activist", August 2019. Available at <https://www.nyasatimes.com/csocos-condemn-cowardly-petrol-bomb-attacks-malawi-activist-mtambo-latest-casualty/>.

<sup>4</sup> See: "Judicial harassment of Human Rights Defenders Gift Trapence and McDonald Sembereka". Available at <https://www.frontlinedefenders.org/en/case/judicial-harassment-human-rights-defenders-gift-trapence-and-mcdonald-sembereka>

<sup>5</sup> CIVICUS Monitor: Maldives, <https://monitor.civicus.org/country/maldives>.

## **2. Freedom of association**

- 2.1** During Malawi's examination under the 2<sup>nd</sup> UPR cycle, the government received nine recommendations related to the right to the freedom of association and creating an enabling environment for CSOs. Among other recommendations, the government committed to ensuring that "laws protecting freedoms of association are implemented and adhered to" and "ensure that relevant constitutional provisions relating to freedom of speech and assembly are allowed to thrive without undue interference." Of the nine recommendations on the freedom of association, the government has not implemented any.
- 2.2** Article 32 of the 2017 (as amended) Malawian Constitution guarantees the right to the freedom of association. Moreover, article 22 of the ICCPR, to which Malawi is a state party, also guarantees the freedom of association. However, despite these commitments, the government has continued to impose unwarranted restrictions on the right to the freedom of association. Among other limitations, CSOs continue to come under attack while the government has introduced legislation that imposes harsh and restrictive conditions on the establishment and operations of CSOs.
- 2.3** Under the NGO Act (2000) the government requires all CSOs to register with three different government institutions – Registrar General's office, Council for Non-governmental Organisations in Malawi (CONGOMA) and the NGO Board – and pay a one-off registration fee of K50,000 (approx. US\$70) as well as an annual fee of K50000 to the government. However, according to the Non-Governmental Organisations (Fees) Regulations of 2017, gazetted effective 1 January 2018, the annual fee has been increased to K1 million (approx. US\$1,400) – a 1,900 per cent increase – which must be payed within the first three months of the year.<sup>6</sup>
- 2.4** The NGO Act as well as other laws, such as the Penal Code, Trustees Incorporation Act of 1962 and Companies Act 2000, continue to restrict the operations of CSOs in Malawi. There is also a requirement for CSOs to have agreements and a memorandum of understanding (MoU) with relevant government ministries and departments to enable them to implement their activities. In November 2018, the government introduced and presented to parliament a new bill to amend the NGO Act. The bill has a number of provisions that pose a threat to civic space, including the freedom of association, such as mandatory registration of all CSOs and imposition of additional criminal sanctions for non-complying CSOs.

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<sup>6</sup>See: "New NGO registration fees: A huge step backward for freedom of association in Malawi and an effort to stifle civic space," January 2018. Available at [www.chrrmw.org](http://www.chrrmw.org); Also see "Civic Freedom Monitor: Malawi", June 2019. Available at <http://www.icnl.org/research/monitor/malawi.html>.

**2.5** The government has invoked the Penal Code to restrict the freedom of association. For instance, in July 2016, the Nyasa Rainbow Alliance, a CSO that works on LGBTQI rights, filed an application for registration as an NGO with the Registrar General's Department. A year later, on 18 May 2017, the organisation was denied a registration certificate on the grounds that the "membership practices" were recognised as an offence under the Laws of Malawi.<sup>7</sup> The state further argued that the right to the freedom of association is not absolute and can be limited in accordance with the Malawi Constitution.

### **3. Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists**

- 3.1** Under Malawi's previous UPR examination, the government received 20 recommendations related to the protection of HRDs, civil society representatives and journalists. The government committed "to fully investigate all cases of harassment and intimidation of journalists and human rights defenders with a view of bringing the perpetrators to justice" and "ensure protection of human rights defenders." Of the recommendations received, 17 were accepted and three were noted. However, as examined in this section, the government has not implemented any of the recommendations.
- 3.2** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure protection to human rights defenders. The ICCPR further guarantees the freedoms of expression, peaceful assembly and association. The Constitution of the Republic of Malawi provides for substantial protection of HRDs and stipulates various freedoms. Article 15 (1) of the Constitution provides for the respect for human rights and fundamental freedoms by the executive, legislature and judiciary and other organs of the government and its agencies.
- 3.3** However, despite these provisions, lack of access to justice, undue limitations on the right to hold peaceful demonstrations and political intolerance continue to pose challenges to HRDs. HRDs, civil society activists and journalists are often experience threats, harassment, arbitrary arrests and intimidation in the course of their work.<sup>8</sup> HRDs have been subjected to hostility and labelled as an 'opposition force'. Attacks on HRDs may force them to self-censor for fear of reprisal. HRDs are often subjected to excessive use of force by the police, who enjoy high levels of impunity.

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<sup>7</sup> See: Penal Code Clause 153 on Unnatural offences; Clause 154 on Attempt to commit unnatural offences; and Clause 156 on Indecent practices between males.

<sup>8</sup> Forst M., (2018). World report on the situation of human rights defenders: Malawi. Available at <https://www.business-humanrights.org/sites/default/files/documents/UNSR%20HRDs-%20World%20report%202018.pdf>

- 3.4** In addition, the government continues to demonise CSOs and HRDs that speak out against government maleficence, including corruption and human rights violations. Such CSOs and HRDs have been labelled "unpatriotic" and have been targeted and threatened to stop criticising government officials. Senior government officials, including members of the ruling Democratic Progressive Party (DPP), have often incited attacks on HRDs and CSOs by making derogatory statements against activists and likening them to enemies of the state. On 6 July 2019, in a speech at the country's Independence Day celebration, President Peter Mutharika accused HRDs of plotting to overthrow his government and threatened to "deal" with them, warning that "force will be met by force and this nonsense will come to an end."<sup>9</sup> The government has also continued to attack and threaten CSOs who champion minority rights, such as same-sex marriages, calling them "worse than dogs" and urging Malawians to kill them.<sup>10</sup>
- 3.5** There is a growing concern among CSOs that several laws in place and in development effectively curtail the freedoms of HRDs outlined in the Constitution. For instance, the Penal Code includes offences that create undue restrictions on the work of HRDs for acts of sedition, which allow for the imprisonment of HRDs that may annoy the head of state. Further, the Police Act of 2010 endow the police with the power to search a property without a warrant.
- 3.6** On 9 July 2019, the police arrested and detained several HRDs on allegations of misappropriating funds and conducting illegal activities. For instance, Gift Trapence and Reverend McDonald Sembereka were detained for 48 hours on allegations of operating an illegal CSO, despite the fact that their organisation is duly registered under the Companies Act. Gift Trapence and McDonald Sembereka had organised peaceful protests demanding transparency, good governance, and a favourable environment for civic space. However, the arrest was clearly a ploy to stop them from organising mass demonstrations to force the Malawi Electoral Commission chairperson, Jane Ansah, to resign over alleged election irregularities. Gift Trapence works for CEDEP while McDonald Sembereka coordinates the Human Rights Consultative Committee, a network of local CSOs working on the accountability of government officials and promoting civil and political rights.
- 3.7** On 25 February 2019, the Supreme Court of Appeal ordered Charles Kajoloweka, the Executive Director of Youth and Society (YAS) to pay K21 million (approx. US\$29,000) as costs for a case he lost in which he had asked the court to order President Mutharika to fire his then Cabinet minister George Chaponda in connection

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<sup>9</sup> See: Malawi leader says protesters want 'lawless society' after disputed vote, June 2019. Available at <https://www.france24.com/en/20190706-malawi-leader-says-protesters-want-lawless-society-after-disputed-vote>

<sup>10</sup> Malawian politician says homosexuals are worse than dogs and should be killed, <https://www.thesouthafrican.com/news/malawian-politician-says-homosexuals-are-worse-than-dogs-should-be-killed/>

with a controversial 2017 maize import deal.<sup>11</sup> YAS is a human rights and governance watchdog CSO. Its mission is to promote and defend human rights and democratic governance in Malawi in the principal interest of young people and marginalised groups.

- 3.8** On 15 August 2019, three petrol bombs were thrown at the car and home of Timothy Mtambo, the chairman of Malawi's Human Rights Defenders Coalition (HRDC), and the executive director CHRR. The attack was a clear act of intimidation designed to deter him from carrying out his human rights work. The incident came weeks after Mtambo received threats for organising demonstrations over allegations of mismanagement of the 21 May 2019 elections.
- 3.9** On 30 August 2018, five unidentified people broke into the offices of CHRR in Lilongwe, demanding that the security guard disclose Timothy Mtambo's location. A petrol bomb was thrown outside the office premises, damaging part of the property, and another petrol bomb and a five-litre bottle of petrol were later found at the scene after the culprits had escaped. This incident was closely linked to threats by ruling party officials that they would "deal" with organisations critical of the regime (see 3.4).
- 3.10** Despite the government's acceptance of some UPR recommendations relating to the protection of LGBTQI people, consensual sexual activity between same-sex couples remains illegal and punishable by up to 14 years in prison. LGBTQI people continue to face violence and discrimination in almost all aspects of their daily lives. Police often physically assault, arbitrarily arrest and detain LGBTQI people and defenders, sometimes without due process or a legal basis, at other times as punishment for simply exercising basic rights, including when seeking treatment in health institutions. For instance, Lawrence Phiri, a transgender activist, was assaulted on 25 August 2019 in Lilongwe by people who accused him of promoting LGBTQI rights.

#### **4. Freedom of expression, independence of the media and access to information**

- 4.1.** Under the 2<sup>nd</sup> UPR cycle, the government received 15 recommendations relating to the freedom of expression and access to information. For example, the government pledged to "ensure that relevant constitutional provisions relating to freedom of the press are properly implemented and adhered to and that a free press, and freedom of speech are allowed to thrive without undue interference." Of the 15 recommendations received, 11 were accepted and four were noted. However, as

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<sup>11</sup> See: Malawi: Court Slaps CSOs Leader Kajoloweka With K21 Million Fine, June 2019. Available at <https://allafrica.com/stories/201906241100.html>

stated below, compared to the rate of violations, the government is only slowly taking measures to implement these recommendations. Of the 15 recommendations, the government has implemented only one, relating to access to information.

- 4.2.** Access to information has improved in Malawi in the past few years and the number of cases of abuses against reporters is reducing. The Access to Information Act (ATI), which allows people to request information about elected officials and government institutions, was finally promulgated in February 2017. If effectively implemented, the ATI is an effective tool to develop a culture of transparency and openness in government operations.
- 4.3.** Article 19 of the ICCPR guarantees the right to the freedoms of expression and opinion. Articles 34 and 35 of the Constitution of Malawi also guarantee the right to the freedoms of opinion and expression respectively. However, the Penal Code contains offences that in practice create undue censorship, particularly the offence of sedition. Sections 50 and 51 of the Penal Code establish the offence of sedition and allow a fine up to K 354 845 (approximately US \$ 480) and imprisonment of five years for first offenders and seven years for subsequent offences.
- 4.4.** The Penal Code contains many other problematic provisions regarding the freedom of expression, including providing for the imprisonment of those who “insult” the head of state. Moreover, the cybersecurity law adopted in 2016 allows for the imprisonment of those who simply post “offensive” content.<sup>12</sup> These laws have been used against journalists and bloggers to restrict their work. For instance, in February 2018, the Daily Times media group had to apologise to the ruling party for a report that was alleged to have favoured the main opposition political party.
- 4.5.** Numerous attacks against journalists by state and non-actors continue to challenge the work of activists and HRDs in relation to their exercise of the freedoms of expression and opinion. On various occasions, the authorities have attempted to intimidate journalists who have reported criticism of the ruling party. The government has also regularly barred privately owned media critical of the administration from covering government events. Journalists sometimes practice self-censorship, especially at government-owned media outlets such as the Malawi Broadcasting Corporation.
- 4.6.** The state has routinely used electronic surveillance to monitor the communications of HRDs. For instance, on 26 August 2019, a WhatsApp Group conversation of members of the Human Rights Defenders Coalition was leaked to the media by supporters of the ruling party. In April 2019, activist Tumpale Mwakibinga was arrested after he posted on Facebook a message critical of the first lady. He was

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<sup>12</sup> See: Penal Code, Section 50 and 51 of the Penal

charged with insulting the modesty of a woman and a cyber violation under the Electronic Transaction and Cyber Security Act of 2016.

- 4.7.** On 21 August 2018, police arrested Manes Hale, an activist, on charges of insulting the president under section 4 of the Protected Flag, Emblems and Names Act for critical remarks she wrote about the president on Facebook. Although she was released on bail after two days of detention and the case was dropped, her arrest and detention are clear indicators of the government's lack of commitment to implement UPR recommendations on the freedom of expression.
- 4.8.** In May 2019, Times Group photojournalist, Douglas Banda, was beaten by ruling DPP supporters while filming them disturbing parliamentary proceedings. There were no investigations or arrests made despite the fact that the case was reported to the police.
- 4.9.** In March 2019, a journalist with Zodiak Broadcasting Station, John Paul Kayuni, was assaulted and detained by the police for covering protests staged by the Association of Persons with Albinism in Lilongwe.<sup>13</sup> In February 2019, BBC journalists investigating a series of mysterious murders in Malawi were attacked in Karonga by an angry mob who confiscated their equipment and damaged one of their two vehicles. In July 2018, two government-linked officials assaulted newspaper columnist Idris Ali Nassah of Nyasa Times for his criticism of the Mutharika administration.<sup>14</sup>
- 4.10** Further, the government has used the Malawi Revenue Authority to close down private media houses and broadcasting companies on accusations of unpaid taxes, while the government-owned broadcasting agency continues to operate uninterrupted despite owing huge sums of unpaid taxes. For instance, in June 2019, the Malawi Revenue Authority shut down the Times Group offices due to unpaid tax arrears of about around K 545 935 000 (approximately US \$756,000).<sup>15</sup> Similarly, in August 2019, Zodiak Broadcasting was raided by the same revenue agency for owing K 1.6 billion (approximately US \$2,337,000) in unpaid taxes.<sup>16</sup> However, in contrast the government-owned broadcaster owed the Authority around K 4.4 billion (approximately US \$6,187,000) in taxes arrears but continues to operate without encumbrances.

## 5. Freedom of peaceful assembly

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<sup>13</sup> <https://www.nyasatimes.com/csos-misa-malawi-condemn-police-over-zodiak-journalist-attack-and-arrest/>

<sup>14</sup> <http://www.malawianwatchdog.com/featured/dpp-carets-assault-veteran-journalist-idris-ali-nassah/>

<sup>15</sup> United States Department of State, Malawi 2018 human rights report, 2018. <https://www.state.gov/wp-content/uploads/2019/03/Malawi-2018.pdf>

<sup>16</sup> United States Department of State, 2018.

- 5.1** During Malawi's examination under the 2<sup>nd</sup> UPR cycle, the government received five recommendations related to the right to the freedom of peaceful assembly. Among other recommendations, the government committed to ensuring that "laws protecting freedoms of assembly are implemented and adhered to" and to "ensure that relevant constitutional provisions relating to freedom of assembly are allowed to thrive without undue interference." All five recommendations were accepted by the government, but none of them have been implemented.
- 5.2** Article 21 of the ICCPR guarantees the freedom of peaceful assembly. In addition, article 38 of the Malawian Constitution also guarantees the right to the freedom of assembly. However, in policy and practice, public authorities have routinely undermined these provisions.
- 5.3** While there is no specific legislation on assembly or public gatherings, a number of laws including the Police Act of 2009 are used to govern the right to protest. However, the Police Act is not easily accessible to the public; it is not available on major government websites and libraries or the official parliamentary website. As a result, there are major public misconceptions with regards to the regulation of public assemblies or gatherings.
- 5.4** On 6 August 2019, in Lilongwe, a police-owned armoured vehicle and a house belonging to a police officer were set alight by irate protesters after police fired teargas and rubber bullets to disperse protesters. On 2 August 2019, the government petitioned the High Court for an order to ban all demonstrations and require deposits from protesters of US\$2.7 million as collateral for damages that may occur in the course of protests. The government justified this position on the basis that previous demonstrations had turned violent, resulting in massive looting and extensive damage to property. Although the high court ruled against this petition, the government's petition does not reflect a spirit of commitment to implement UPR recommendation.
- 5.5** In July 2019, the Ministry of Homeland Security directed government ministries, departments, agencies, and individuals to claim for damages to property from organisers, including HRDC, of nationwide protests in June and July 2019 following the presidential election. During these protests, the police often used teargas and rubber bullets to disperse peaceful protesters.<sup>17</sup> For instance, on June 6 2019, in Lilongwe, a child was "accidentally shot" by police during the process of dispersing peaceful protesters. Following protests on 6 August 2019, police carries out mass arrests of around 200 protesters in Lilongwe and the city of Mzuzu. There has not been any accountability for the excessive use of force and mass arrests by security forces, despite petitions from civil society activists and HRDs.<sup>18</sup>

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<sup>17</sup> Malawi protests spread after disputed elections, <https://www.vocfm.co.za/malawi-protests-spread-after-disputed-election/>

<sup>18</sup> Malawi: opposition protests enter third day, <https://www.power987.co.za/news/malawi-police-fire-tear-gas-at-protesters-seeking-mutharika-exit/>

## **6. Recommendations to the Government of Malawi**

CIVICUS, CHRR and CEDEP call on the Government of Malawi to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: the freedoms of association, peaceful assembly and 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 the light of this, the following specific recommendations are made:

### **6.1 Freedom of association**

- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit the right to association.
- Remove all undue restrictions on the ability of CSOs to receive international and domestic funding, in line with best practices articulated by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.
- Abolish criminal responsibility for organising and participating in the activities of non-registered organisations and lift the ban on the activities of non-registered organisations.
- Immediately reinstate all CSOs that have been arbitrarily and unduly sanctioned or deregistered.
- Cease unwarranted raids on CSOs and unjustifiable disruptions to their legitimate activities, including conferences and seminars.
- Refrain from acts leading to the closure of CSOs or the suspension of their peaceful activities, and instead promote a meaningful political dialogue that allows and embraces diverging views, including those of CSOs, HRDs, journalists, political activists and others.
- Amend the NGO Act 2000 and Police Act 2009 to guarantee that undue restrictions on the freedom of association are removed to bring their provisions into compliance with articles 21 and 22 of ICCPR.

## **6.2 Protection of human rights defenders**

- Provide civil society members, HRDs and journalists with a safe and secure environment in which to carry out their work. Conduct impartial, thorough and effective investigations into all cases of attacks, harassment and intimidation against them and bring the perpetrators of such offences to justice.
- Ensure that HRDs are able to carry out their legitimate activities without fear or undue hindrance, obstruction, or legal and administrative harassment.
- Initiate a consolidated process of repeal or amendment of legalisation and decrees that unwarrantedly restrict the legitimate work of HRDs, in line with the UN Declaration on Human Rights Defenders;
- Specifically, suitably amend the Penal Code, NGO Act 2000 and Police Act 2009, in accordance with the ICCPR and the UN Declaration on Human Rights Defenders.
- Unconditionally and immediately release all HRDs, including journalists and bloggers, detained for exercising their rights to the freedoms of association, peaceful assembly and expression, and review their cases to prevent further harassment.
- Publicly condemn at the highest levels of instances of harassment and intimidation of CSOs and activists.
- Systematically apply legal provisions that promote and protect human rights and establish mechanisms that protect HRDs by adopting a specific law on the protection of HRDs, in accordance with Human Rights Council resolution 27.31.

## **6.3 Freedom of expression, independence of the media and access to information**

- Ensure the freedom of expression and media freedom by all bringing national legislation into line with international standards.
- Review the Penal Code, NGO Act 2000, Police Act 2009, and Access to Information Law 2016 in order to ensure that media legislation is in line with best practices and international standards in the area of the freedom of expression.
- Reinstate all media outlets that have been unwarrantedly closed.
- Cease the practice of confiscating and censoring print media.

- Reform defamation legislation, in conformity with ICCPR article 19.
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the government may deem sensitive.
- Take adequate steps to lift restrictions on the freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.
- Guarantee unfettered access for all people in Malawi to domestic and foreign media information, both offline and online
- Develop an action plan to ensure that internet laws comply with the government's commitment to guarantee the freedoms of expression and information, ensuring free access to electronic media and enabling journalists, bloggers and other internet users to play a full and active role in promoting and protecting human rights.
- Organise inclusive consultations with journalists and media in order to resolve disputes that exist concerning the freedom of expression.
- Refrain from adopting any laws providing for censorship or undue control over the content of the media.

#### **6.4 Freedom of peaceful assembly**

- Adopt best practices on the freedom of peaceful assembly, as put forward by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in his 2012 annual report, which calls for procedures in which there is simple notification of assemblies being held, rather than explicit permission being needed to assemble.
- Amend the Police Act 2009 and Penal Code in order to guarantee fully the right to the freedom of peaceful assembly.
- Unconditionally and immediately release all protesters, HRDs and journalists detained for exercising their right to the freedom of peaceful assembly and review their cases to prevent further harassment.

- Immediately and impartially investigate all instances of extrajudicial killing and excessive force committed by security forces while monitoring protests and demonstrations.
- Review and update existing human rights training for police and security forces, with the assistance of independent CSOs, to foster the more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
- Publicly condemn at the highest level the use of excessive and brutal force by security forces in the dispersal of protests, launch formal investigations into such instances and bring the perpetrators to justice.
- Provide recourse for judicial review and effective remedy, including compensation, in cases of unlawful denial of the right to freedom of peaceful assembly by state authorities.

## **6.5 Regarding access to UN Special Procedures mandate holders**

- The government should extend a standing invitation to all UN Special Procedure mandate holders and prioritise official visits by the: 1) Special Rapporteur on the situation of human rights defenders; 2) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 3) Special Rapporteur on the rights to freedom of peaceful assembly and of association; 4) Special Rapporteur on the Independence of Judges and Lawyers; 5) Special Rapporteur on extrajudicial, summary or arbitrary executions; 6) Special Rapporteur on the rights to privacy and; 7) Working Group on Arbitrary Detention.

## **6.6 Regarding the state's engagement with civil society**

- Implement transparent and inclusive mechanisms of public consultations with CSOs on all issues mentioned above and enable the more effective involvement of civil society in the preparation of law and policy.
- Include CSOs in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society on the implementation of UPR recommendations, including by holding periodical comprehensive consultations with a diverse range of civil society.

- Incorporate the results of this UPR into action plans for the promotion and protection of all human rights, taking into account the proposals of civil society, and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.

## 7. Annex: Assessment of implementation of civic space recommendations under the 2<sup>nd</sup> cycle

<b>Recommendation</b>	<b>Position</b>	<b>Assessment/Comments on level of implementation</b>
<b>114.78.</b> Continue developing efforts to guarantee the full exercise of the right to freedom of information and expression, promoting the independence and pluralism of the media, and develop awareness programmes about the importance of this human right (Uruguay)  <b>Source of position:</b> A/HRC/27/16 - Para. 114	Accepted	Status: Not implemented  Source: Section 4 - para. 4.5.
<b>114.79.</b> Guarantee freedom of expression and information through the independence and pluralism of the media and guarantee freedom of association (France)  <b>Source of position:</b> A/HRC/27/16 - Para. 114	Accepted	Status: Not implemented  Source: Section 2; Section 4 - para. 4.5
<b>114.80.</b> Promote the independence and pluralism of the media, mindful that freedom of expression is a fundamental human right (Israel)  <b>Source of position:</b> A/HRC/27/16 - Para. 114	Accepted	Status: Not implemented  Source: Section 4
<b>114.81.</b> Create and ensure an enabling environment for free and independent media (Lithuania)  <b>Source of position:</b> A/HRC/27/16 - Para. 114	Accepted	Status: Not implemented  Source: Section 4

<p><b>114.82.</b> Promote efforts to ensure that the right to freedom of expression can be fully exercised and that all violations against human rights defenders and journalists are effectively investigated and prosecuted (Norway)</p> <p><b>Source of position:</b> A/HRC/27/16 - Para. 114</p>	Accepted	<p>Status: Not implemented</p> <p>Source: Section 3; Section 4</p>
<p><b>114.83.</b> Further promote freedom of expression and the independence of the media (Sierra Leone)</p> <p><b>Source of position:</b> A/HRC/27/16 - Para. 114</p>	Accepted	<p>Status: Not implemented</p> <p>Source: Section 4</p>
<p><b>114.84.</b> Guarantee a safe and enabling environment for journalists and human rights defenders and ensure that all cases of attacks against them are investigated by independent and impartial bodies (Austria)</p> <p><b>Source of position:</b> A/HRC/27/16 - Para. 114</p>	Accepted	<p>Status: Not implemented</p> <p>Source: Section 3</p>
<p><b>114.85.</b> Take all necessary measures for the protection of journalists and human rights defenders, in particular through the prosecution of the authors of intimidation or violence against them, and by ensuring the independence of their actions (France)</p> <p><b>Source of position:</b> A/HRC/27/16 - Para. 114</p>	Accepted	<p>Status: Not implemented</p> <p>Source: Section 3; Section 2; Section 4</p>
<p><b>114.86.</b> Ensure that members of the political opposition, civil society organizations as well as journalists are free to express their views and opinions, including guarantees for their rights to freedom of assembly (Germany)</p> <p><b>Source of position:</b> A/HRC/27/16 - Para. 114</p>	Accepted	<p>Status: Not implemented</p> <p>Source: Section 4; Section 5</p>
<p><b>114.87.</b> Investigate all allegations of threats and harassment against journalists and bring the perpetrators to justice (Ireland)</p> <p><b>Source of position:</b> A/HRC/27/16 - Para. 114</p>	Accepted	<p>Status: Not implemented</p> <p>Source: Section 3; Section 4</p>

<p><b>114.88.</b> Ensure that the rights of human rights defenders are respected and ensure that the judicial authorities carry out thorough and impartial investigations with respect to threats, intimidation and violence against human rights defenders (Belgium)</p> <p><b>Source of position:</b> A/HRC/27/16 - Para. 114</p>	Accepted	<p>Status: Not implemented</p> <p>Source: Section 3</p>
<p><b>114.89.</b> Avoid any obstacle to the work exercised by individuals and institutions protecting human rights in Nicaragua (Spain)</p> <p><b>Source of position:</b> A/HRC/27/16 - Para. 114</p>	Accepted	<p>Status: Not implemented</p> <p>Source: Section 2; Section 3</p>
<p><b>114.90.</b> Comply with the recommendation accepted in 2010, but not yet implemented, to establish an “Observatory on Human Rights Defenders” in collaboration with organizations that defend human rights in the country (Spain)</p> <p><b>Source of position:</b> A/HRC/27/16 - Para. 114</p>	Accepted	<p>Status: Not implemented</p> <p>Source: Section 3</p>
<p><b>114.91.</b> Guarantee the right to freedom of assembly and of association in accordance with international obligations (Lithuania)</p> <p><b>Source of position:</b> A/HRC/27/16 - Para. 114</p>	Accepted	<p>Status: Not implemented</p> <p>Source: Section 5; Section 2</p>
<p><b>114.92.</b> Continue ensuring that cases where police officers are accused of failing to protect peaceful protestors are promptly and fully investigated, and those responsible are brought to justice (Lithuania)</p> <p><b>Source of position:</b> A/HRC/27/16 - Para. 114</p>	Accepted	<p>Status: Not implemented</p> <p>Source: Section 5</p>
<p><b>114.93.</b> Implement fully the bill on access to information and take effective measures to protect freedom of the press by investigating all reported incidents of intimidation or harassment of journalists (Canada)</p> <p><b>Source of position:</b> A/HRC/27/16 - Para. 114</p>	Accepted	<p>Status: Not implemented</p> <p>Source: Section 4; para. 4.7</p>

<p><b>114.94.</b> Redouble efforts to promote the full exercise of the right to information and freedom of expression and promote, likewise, the independence and pluralism of the media (Costa Rica)</p>	Accepted	<p>Status: Not implemented  Source: Section 4</p>
<p><b>Source of position:</b> A/HRC/27/16 - Para. 114</p>		
<p><b>114.95.</b> Continue its efforts to promote the full exercise of the right to freedom of information and expression (India)</p>	Accepted	<p>Status: Not implemented  Source: Section 4</p>
<p><b>Source of position:</b> A/HRC/27/16 - Para. 114</p>		
<p><b>115.7.</b> Ensure that constitutional protections for freedom of expression, including press freedom, are upheld; and refrain from using administrative, judicial and financial means to unduly restrict the exercise of this right (United States of America)</p>	Accepted	<p>Status: Not implemented  Source: Section 4</p>
<p><b>Source of position:</b> A/HRC/27/16 - Para. 115</p>		
<p><b>115.8.</b> Protect the rights to freedom of expression and assembly and ensure all abuses allegedly committed by police are transparently investigated (Australia)</p>	Accepted	<p>Status: Not implemented  Source: Section 4; Section 5</p>
<p><b>Source of position:</b> A/HRC/27/16 - Para. 115</p>		
<p><b>116.20.</b> Ensure the full protection of the freedom of expression of its citizens, including the right to peaceful protest, and refrain from and condemn actions intended to intimidate or repress citizens exercising their rights (Canada)</p>	Accepted	<p>Status: Not implemented  Source: Section 4; Section 5</p>
<p><b>Source of position:</b> A/HRC/27/16 - Para. 116, Add.1 – Para. 19</p>		
<p><b>116.21.</b> Fully guarantee respect for freedom of expression and opinion and fully comply with its commitments under the International Covenant on Civil and Political Rights, in particular articles 19 and 22 (Slovenia)</p>	Accepted	<p>Status: Not implemented  Source: Section 4</p>
<p><b>Source of position:</b> A/HRC/27/16 - Para. 116, Add.1 – Para. 19</p>		

<b>116.22.</b> Decriminalize defamation (Ghana)	Noted	Status: Not implemented  Source: Section 4 - para. 4.3
<b>116.23.</b> Establish an institutional structure that guarantees the right of access to public information (Israel)	Noted	Status: Not implemented  Source: Section 4 - para. 4.7
<b>117.12.</b> Investigate credible allegations of human rights violations by security forces and prosecute, as appropriate, parties responsible in accordance with its international obligations and commitments (United States of America)	Noted	Status: Not implemented  Source: Section 5
<b>117.18.</b> Promote actively plurality of the media, hold perpetrators of attacks against journalists accountable, and decriminalize defamation (Czech Republic)	Noted	Status: Not implemented  Source: Section 4 – para. 4.3; para. 4.5; Section 3
<b>Source of position:</b> A/HRC/27/16 - Para. 116, Add.1 – Para. 26		
<b>Source of position:</b> A/HRC/27/16 - Para. 117, Add.1 – Para. 34		
<b>Source of position:</b> A/HRC/27/16 - Para. 117, Add.1 – Para. 26		