

## Malawi: Mr Ralph Kasambara

[16 February 2012]

The Bar Human Rights Committee (BHRC) is concerned at the news of an apparent attack on Malawian lawyer and former Attorney-General Mr Ralph Kasambara, and the circumstances around his ongoing detention in prison. We are also concerned at the treatment of his lawyers, others involved in his case and other human rights defenders.

### Violence and intimidation

Attacks on lawyers and human rights defenders, working within the law, are a matter of deep concern to the BHRC. We note that the attack against Mr Kasambara follows widespread reports of harassment and intimidation of human rights defenders in Malawi.

We recall further that international law recognises the rights of lawyers, like other citizens, to express their opinions and take part in public discussions in matters concerning the law, the administration of justice and the promotion and protection of human rights<sup>1</sup>. Such rights, and obligations to protect citizens from harm, of course are part of the wider body of international human rights law to which Malawi is a party. International law also specifically requires governments to ensure that lawyers are able to perform all of their professional functions without intimidation, harassment or proper interference<sup>2</sup>. These rights of freedom of expression, political rights and others, are reflected in the Constitution of Malawi.

Such violence and intimidation, whatever its provenance, is unacceptable. We call on the Government to urgent public take steps to identify and punish the perpetrators, and to condemn the attacks on Mr Kasambara and other lawyers and human rights defenders and to ensure their future protection.

### Attacks, Arrests and Allegations

Ralph Kasambara is the former Attorney General of Malawi, and now in private practice at Ralph & Arnold Associates, where Jonathan Kara and Wapona Kita are also lawyers in practice. The firm is engaged in significant Constitutional rights work. Over the weekend of 11/12 February 2012, interviews with Mr Kasambara were published in leading Malawian newspapers the Weekend Nation and the Sunday Times, which were highly critical of the government and called for the resignation and impeachment of Malawi's President, Bingu wa Mutharika.

We understand that on Monday 13 February 2012 Mr Kasambara's offices in Blantyre were then attacked by a group of men armed with petrol bombs. His security are said to have overpowered the men and taken some of them to the police station. The police arrested Mr Kasambara and five of those with him (Arthur Chikankheni, Mayamiko Kadango, Brian Magoya, Ali Kaka and Patrick

---

<sup>1</sup> Article 23, The Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available at <http://www2.ohchr.org/english/law/lawyers.htm> .

<sup>2</sup> Article 16

Gadama). The Information Minister Ms Kaliati alleged that “*Kasambara and his friends were demanding sex from the men he is alleging were trying to attack him*”<sup>3</sup> and had kidnapped them; this has been widely ridiculed. Mr Kasambara was subsequently charged with kidnapping and assault occasioning actual bodily harm and transferred to Chichiri prison. No formal charge has been brought before a court to date.

Malawian Courts are not on strike, it is the support staff who have been striking since January. The Blantyre Principal Resident Magistrate heard the bail applications from the men. Bail was granted by the Court on 14 February, on condition that a large surety be given and Mr Kasambara and co-accused report weekly to the police. He was not actually released until the following afternoon as prison authorities claimed that they could not operate after 3pm in the afternoon.

An hour after his release on bail on 15 February, police arrived at Mr Kasambara’s house and re-arrested him. The police alleged that proper procedures were not followed in his release. They have not, however, disclosed what these breaches in procedure are. He was taken back to Chichiri prison - after 4pm. His security detail remain on bail.

He is now in ongoing detention in prison, despite the grant of bail and his colleagues serving the Release Order on the prison and police on the morning of 16 February 2012. The prison authorities say that they have specific orders from the police not to release him unless the police sign off on the release order and are themselves present at the prison, in contravention of established law. The police say that he must go back to Court and make a new bail application. In the afternoon of 16 February he was transferred to Zomba maximum security prison.

Anti-corruption charges are pending against the magistrate who granted bail, and Mr Kara and Mr. Kita have been summoned. The Anti-Corruption Bureau has not disclosed the exact alleged offences being investigated but it is understood that they are to be asked questions about their role in obtaining bail for Mr Kasambara<sup>4</sup>.

### **Detention and Charge**

The BHRC recalls that the Malawian Constitution and Bill of Rights properly provide that its citizens are innocent until proven guilty, that their detention is reviewed by a court and released unless the interests of justice require otherwise. The BHRC urges the Malawian government to ensure that Court rulings in Mr Kasambara’s case are properly respected, particularly in relation to bail, and that he is released as a matter of urgency. If he or others are to be charged, it must be done in accordance with the Constitution.

Magistrate Innocent Nebi who granted bail must have his judicial independence and authority respected, without inappropriate or unwarranted interference.<sup>5</sup> We call on the Government to ensure this is respected.

---

<sup>3</sup> “[Kaliati’s sex assault claims on Kasambara rubbished](http://www.nyasatimes.com/malawi/2012/02/14/kaliati%E2%80%99s-sex-assault-claims-on-kasambara-rubbished/)”, Nyasa Times, 14 Feb 2012, <http://www.nyasatimes.com/malawi/2012/02/14/kaliati%E2%80%99s-sex-assault-claims-on-kasambara-rubbished/>

<sup>4</sup> <http://www.nyasatimes.com/malawi/2012/02/16/malawi-anti-graft-body-summons-lawyers-kita-kara/>

<sup>5</sup> In accordance with the Basic Principles on the Independence of the Judiciary Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to

We further call on the Government to ensure that he and his lawyers are treated as innocent until proven guilty, and receive a fair trial if matters proceed. We will be closely monitoring developments in accordance with our mandate, and in partnership with other international organisations.

Finally, we note that President Mutharika, in response to allegations from some quarters of restriction of democracy, has said *"it is simply not true. Because if it were true, all these people would have been rounded up. None of them have. They are free now. If indeed Malawi was starting to be a police state, would they still be walking free? That's the question."* Further, His Excellency has stressed that *"from 2004 until now, there is no single political prisoner in a Malawian jail."*<sup>6</sup>

We hope that this remains the case.

**ENDS//**

Notes to Editors:

The **Bar Human Rights Committee of England and Wales (BHRC)** is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with the protection on the rights of advocates and judges around the world. The Committee is also concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial.

**Mr Ralph Kasambara** undertakes public interest cases in Malawi. Most recently he has been involved in supporting judiciary staff in their demands for the agreed revision of their employment terms and conditions to be implemented.

In the past his Law Firm, Ralph and Arnold Associates, was actively involved in academic freedom cases following the summoning of one University of Malawi Lecturer by the Inspector General of Police and the standoff that ensued thereafter between University Lecturers and the Malawi government.<sup>7</sup>

He has also been actively involved in court cases relating to the recent public demonstrations in Malawi. He provided legal advice to demonstration organizers;<sup>8</sup> on the 20 July 2011 he was involved in lifting the injunction obtained late at night by government sympathisers in an attempt to stop the planned demonstrations. It was after this injunction was removed that people were able to

---

6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

<sup>6</sup> [Malawi president Bingu wa Mutharika condemns Mugabe comparison](http://www.guardian.co.uk/world/2012/feb/15/malawi-leader-denies-new-mugabe), The Guardian, <http://www.guardian.co.uk/world/2012/feb/15/malawi-leader-denies-new-mugabe>

<sup>7</sup> More details of the issue can be found on this link taking up some cases involving lecturers <https://sites.google.com/a/ccasu.ac.mw/pages/dashboard2/academic-freedom-threat-in-malawi>

<sup>8</sup> [http://www.zodiakmalawi.com/zbs%20malawi/index.php?option=com\\_content&view=article&id=2371:govt-says-north-politicking&catid=1:latest-news&Itemid=109](http://www.zodiakmalawi.com/zbs%20malawi/index.php?option=com_content&view=article&id=2371:govt-says-north-politicking&catid=1:latest-news&Itemid=109)

demonstrate. After the 20 July demonstrations the President singled Ralph out as one of the people behind the demonstrations and promised to deal with him.<sup>9</sup>

Another case Ralph was involved in concerned the right to privacy in which he obtained an injunction against the Malawi Communication Regulatory Authority preventing them from using a machine which allegedly allows them to tap into people's telephone conversations and monitor internet activity.<sup>10</sup>

Ralph is also representing human rights activists in a sedition case.<sup>11</sup> The five are accused of conducting a demonstration against President Bingu wa Mutharika without permission and calling him a dictator on a placard.

Ralph has also made statements on Straight Talk a local radio programme.<sup>12</sup> Five days ago on 13 February 2012 he interview was published in the Weekend Nation where Ralph called upon for the resignation of Malawi's President, Bingu wa Mutharika.<sup>13</sup>

Article 12 of the UN Declaration on Human Rights Defenders<sup>14</sup> provides that States shall take "all necessary measures to ensure the protection by the competent authorities of everyone 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 enshrined in the present Declaration."

The Malawian Constitution and Bill of Rights states that those arrested have the right to be brought before an "independent and impartial court of law" within 48 hours of arrest, and to be there charged or informed of the reason for their further detention, or released. Further, they have the right to be "released from detention, with or without bail, unless the interests of justice require otherwise" and where that detention is unlawful (Article 42).

In relation to Mr Kara, Mr Wapona and other lawyers representing Mr Kasambara, we note that Principle 16 of the Basic Principles on the Role of Lawyers requires Governments to ensure that lawyers "shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties" and that their security is safeguarded if they are threatened as a result of discharging their functions. Any disciplinary proceedings must be "brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review" (principle 28). We call on the Government to enforce these protections.

---

<sup>9</sup> <http://www.newstimeafrica.com/archives/21445>, <http://www.malawidemocrat.com/politics/wa-mutharika%E2%80%99s-coup-claims-%E2%80%98utter-nonsense%E2%80%99-%E2%80%93kasambara/>

<sup>10</sup> <http://www.mwnation.com/index.php/the-nation-current/26525-kaliati-blasts-phone-operators.html>

<sup>11</sup> <http://www.bnltimes.com/index.php/daily-times/headlines/national/1824-activists-granted-bail-in-sedition-case->

<sup>12</sup> <http://malawithewarmheart.com/interviews.php?linkid=18450>

<sup>13</sup> <http://mwnation.com/index.php/weekend-nation-opinion-and-analysis/29909-bingu-must-resign.html>

<sup>14</sup> Adopted by the UN general Assembly in December 1998