



## Statement on actions of the Government of Malawi against the Chief Justice and Judiciary of Malawi

The Commonwealth Magistrates' and Judges' Association (CMJA), The Commonwealth Legal Education Association (CLEA), the Commonwealth Lawyers Association (CLA) and Rechters Voor Rechters (Judges for Judges) call on the Government of Malawi to abide by the Constitution and their international obligations, including the Commonwealth Charter agreed by Heads of Government.

We express the most serious concern at the Statement issued on 12 June 2020 by the Chief Secretary to the Government concerning the purported leave pending retirement of the Right Honourable Justice Andrew KC Nyirenda, SC, the Chief Justice of Malawi. This does not follow proper constitutional requirements for the appointment, tenure and removal of the Chief Justice and that of Judges of the Supreme and High Court of Malawi. We support the Statement by the Judiciary of Malawi dated 14 June 2020 which outlines the facts in relation to leave pending of the Hon. Chief Justice and Judges of the Supreme Court of Appeal and the constitutional provisions whereby a judge can only be removed from office *“where a motion praying for his or her removal on the ground of incompetence in the performance of the duties of his or her office or misbehaviour has been— a. debated in the National Assembly; b. passed by a majority of two thirds of the votes of all the members of the Assembly; and c. submitted to the President as a petition for the removal of the judge concerned: Provided that the procedure for the removal of a judge shall be in accordance with the principles of natural justice.”*(Article 119 of the Constitution).

Chapter IV of the Commonwealth (Latimer House) Principles (2003) states: *“An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice”*.

The Commonwealth Charter (2013) states: *“We believe in the rule of law as an essential protection for the people of the Commonwealth and as an assurance of limited and accountable government. In particular we support an independent, impartial, honest and competent judiciary and recognise that an independent, effective and competent legal system is integral to upholding the rule of law, engendering public confidence and dispensing justice”*.

The Basic Principles on the Independence of the Judiciary further state that: *“The Independence of the Judiciary shall be guaranteed by the State and enshrined in the Constitutional or the law of the country. It is a duty of all governmental and other institutions to respect and observe the independence of the Judiciary”*.

We call on the Malawi government to respect the authority and independence of the judiciary and ensure that due process is followed in line with the Constitution and its international obligations.

The rule of law cannot exist or function if the government and other state authorities ignore their constitutional obligations and fail to abide by court orders or take any measure that erodes the authority, independence and integrity of the judiciary.

**15 June 2020**

**Commonwealth Magistrates' and Judges' Association (CMJA)**

**Commonwealth Legal Education Association (CLEA)**

**Commonwealth Lawyers Association (CLA)**

**Rechters voor Rechters (Judges for Judges)**

## NOTE TO EDITORS:

The **Commonwealth Magistrates' and Judges' Association** is a not for profit organisation, registered in the UK, whose aims are to promote judicial independence, advance education in the law, the administration of justice the treatment of offenders and the prevention of crime in the Commonwealth. It brings together judicial officers of all ranks from all parts of Commonwealth and provides a forum for the promotion of the highest judicial standards at all levels. [www.cmja.org](http://www.cmja.org)

The **Commonwealth Legal Education Association** is an international non-profit organisation which fosters and promotes high standards of legal education in the Commonwealth. Founded in 1971, it is a Commonwealth-wide body with regional Chapters and Committees in South Asia, Southern Africa, West Africa, the Caribbean and the UK. [www.clea-web.com](http://www.clea-web.com)

The **Commonwealth Lawyers Association** is an international non-profit organisation which exists to promote and maintain the rule of law throughout the Commonwealth by ensuring that an independent and efficient legal profession, with the highest standards of ethics and integrity, serves the people of the Commonwealth. [www.commonwealthlawyers.com](http://www.commonwealthlawyers.com)

**Rechters voor Rechters (Judges for Judges)** is an independent and non-political foundation set up by judges to support fellow judges abroad who have run into problems or risk problems on account of their professional practice. These problems are mostly related to (presumed) violation of their professional independence. J4J also concerns itself with judges, who have been discharged for disturbing reasons, have been arrested and imprisoned, put under pressure, are threatened or even assassinated. Website: <http://www.rechtersvoorrechters.nl> or [www.judges4judges.nl](http://www.judges4judges.nl) Twitter: [twitter.com/judges4j](https://twitter.com/judges4j)