

MALAWI HUMAN RIGHTS COMMISSION

# ANNUAL REPORT 2013



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### OFFICE OF THE CHAIRPERSON

Ref No: HRC/02/58

29<sup>th</sup> March, 2014.

The Speaker of the National Assembly,  
Private Bag B362,  
Lilongwe 3.

Dear Honourable Speaker,

The Human Rights Commission (the Commission), has the pleasure and honour to present to Parliament its 13<sup>th</sup> Annual Report, in accordance with section 37 of the Human Rights Act, (Cap. 3:08 of the Laws of Malawi).

The Report covers activities of the Commission, carried out from January to December, 2013, and it highlights some of the challenges the Commission faced in its effort to achieve its strategic objectives. The Report further makes recommendations on key issues of human rights and governance, which arose in the course of the year as observed by the Commission.



Ambassador Sophie Asimenye Kalinde  
**CHAIRPERSON**

# *Malawi Human Rights Commission* **2013 ANNUAL REPORT**

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ACB	-	Anti Corruption Bureau
ACEC	-	Area Civic Education Coordinators
ACHPR	-	African Charter on Human and People's Rights
ACPF	-	African Child Policy Forum
ADMARC	-	Agricultural Division and Marketing Corporation of Malawi
ADR	-	Alternative Dispute Resolution
AIDS	-	Acquired Immuno-Deficiency Syndrome
CADE	-	Convention against Discrimination in Education
CAMA	-	Consumers Association of Malawi
CBOs	-	Community Based Organisations
CEO	-	Chief Executive Officer
CCIs	-	Child Care Institutions
CCRB	-	Child Case Review Board
CSOs	-	Civil Society Organisations
CDSS	-	Community Day Secondary School
CEDAW	-	Convention on Elimination of all Forms of Discrimination Against Women
CERD	-	Convention on the Elimination of All Forms of Racial Discrimination
CHAM	-	Christian Health Association of Malawi
CHH	-	Child Headed Households
CMCT	-	Central Medical Stores Trust
CRC	-	Convention on the Rights of the Child
CSOs	-	Civil Society Organisations
CRPD	-	Convention on the Rights of Persons with Disabilities
DC	-	District Commissioner
DAC	-	District AIDS Coordinator
DEC	-	District Executive Committee
DHO	-	District Health Officer
DGP	-	Democratic Governance Programme
DPD	-	Director of Planning and Development
DPOs	-	Disabled People's Organisations
DPP	-	Director of Public Prosecutions
DPP	-	Death Penalty Project
DSO	-	District Social Welfare Officer
EIA	-	Environmental Impact Assessment
EU	-	European Union
FEDOMA	-	Federation of Disability Organisations in Malawi
GMMA	-	Globe Metal and Mining Africa
GoM	-	Government of Malawi
HIV	-	Human Immuno-Deficiency Virus
HRBA	-	Human Rights Based Approach
HRC	-	Human Rights Council
HRE	-	Human Rights Education
HSA	-	Health Surveillance Officer
ICC	-	International Coordinating Committee of National Human Rights Institutions
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
IEC	-	Information, Education and Communication
JICA	-	Japanese International Cooperation
LDF	-	Local Development Fund
MANAD	-	Malawi National Association of the Deaf
MANET+	-	Malawi Network for People Living with HIV and AIDS
MBC	-	Malawi Broadcasting Corporation
MDF	-	Malawi Defence Force
MDGs	-	Millennium Development Goals
MIE	-	Malawi Institute of Education

MGS	-	Malawi Growth and Development Strategy
MISA	-	Media Institute of Southern Africa
MLS	-	Malawi Law Society
MoJCA	-	Ministry of Justice and Constitutional Affairs
NAC	-	National AIDS Commission
NAPHAM	-	National Association of People Living with HIV and AIDS in Malawi
NFRA	-	National Food Reserve Agency
NGOs	-	Non-Governmental Organisations
NICE	-	National Institute for Civic Education
OHCHR	-	Office of the United Nations High Commissioner for Human Rights
PEAs	-	Primary Schools Education Advisors
QECH	-	Queen Elizabeth Central Hospital
SADC	-	Southern African Development Corporation
SLA	-	Service Level Agreements
SEMA	-	Senior Education Managers
TB	-	Tuberculosis
TVM	-	Malawi Television
UDHR	-	Universal Declaration on Human Rights
UN	-	United Nations
UNAIDS	-	The Joint United Nations Programmes on HIV and AIDS
UNDP	-	United Nations Development Programme
UNICEF	-	United Nations Children Education Fund
UNFPA	-	United Nations Population Fund
UPR	-	Universal Periodic Review

## Acknowledgements

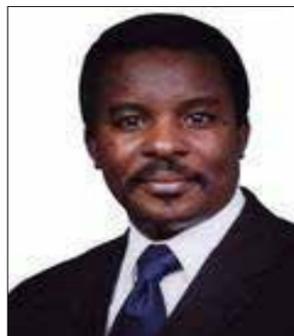
The compilation and production of the 2013 Annual Report of the Commission is first and foremost, a result of the hard work of the staff members' task force, comprising of: Mr. Wycliffe Masoo, Mr. Winston Mwafurirwa, Grace Kalowa, George Kondowe, Stuart Mvula, George Chiusiwa, Peter Chisi, Beston Pakira and Tiwonge Kayira. The contribution and efforts of this task force are greatly appreciated. Special recognition goes to Mrs. Grace T. Malera, the Executive Secretary of the Commission for her valuable input in the compilation of the Report. Commissioners Mr. Benedicto Kondowe and Mr. Dalitso Kubalasa that were specifically assigned with the task of supervising the compilation of this Report are specially acknowledged for their contribution. The overall supervision of the Chairperson, Ambassador Sophie Asimenye Kalinde, ensured the Report's timely compilation and production, in line with the relevant statutory requirement.

The Commission would also like to use this occasion of the compilation and dissemination of this Report to express its gratitude to all the stakeholders and partners that contributed to its work in 2013. First, to the Government of Malawi, through various Ministries and Departments that played different key roles in support of the work of the Commission. Second, to development partners and several donors, listed down in the main body of this Report, who provided the much needed technical and financial assistance that propelled the work of the Commission forward. Third, Civil Society Organisations, and the Media, continued to play the role of being strategic allies of the Commission. Fourth, international organisations, including, the Network of African National Human Rights Institutions, (NANHRI), the International Coordinating Committee of National Human Rights Institutions, (ICC), the African Commission on Human and Peoples' Rights and the Office of the United Nations High Commissioner for Human Rights, (OHCHR), rendered the Commission invaluable support in 2013.

Last but not least, the Commission greatly appreciates the people in Malawi and several stakeholders too numerous to mention who continue to utilise the services of the Commission and in the process raise the legitimacy and significance of the Commission. The Commission keeps counting on your continued support in 2014, and beyond.



**Commissioner Ambassador Mrs. Sophie Asimenye Kalinde** is a holder of a Bachelor of Arts Degree and Post Graduate Diploma in Management from the University of Malawi. She has spent most of her time working in Malawi diplomatic missions. For 3 years she worked as Senior Political Advisor and Head of Mission for the African Union Liaison Head Office of the Great Lakes Region after having worked as Permanent Observer of the Delegation of the African Union and Executive Secretary for the Geneva Office. She has also worked as Ambassador Extraordinary and Plenipotentiary, Permanent Representative of the Malawi Government to the AU and UN. She brings her 25 years experience into the Commission. She is an alternate member of the UN Working Group on Business and Human rights.



**Commissioner Rev. Dr. Zacc Kawalala** is an Accountant by profession and a Pastor by calling. He holds a Bachelors of Commerce Degree from the University of Malawi – Polytechnic, and also holds Bachelors and Masters Degree in Theology from the Team Impact Christian University in the United States of America. In 2009, he completed his Doctoral Studies in Theology with Team Impact Christian University. Previously, he worked for Graham Carr (an auditing firm), for 4 years before moving to fulltime ministry. He is the founder of Word Alive Network of Churches and pioneered the Word Alive Bible College. He is Commissioner responsible for the Economic, Social and Cultural Rights Directorate and he is the Chairman for the Commission's Upper Appointments and Disciplinary Committee. He also serves in the Finance and Audit Committee.



**Commissioner Mr. Marshal Chilenga** is a Senior Partner and Legal Practitioner in the Law Firm of TF & Partners. He holds a Bachelor of Laws (Honours) Degree from the University of Malawi. He is an IBA Fellow in International Business Law and an Associate of the Chartered Institute of Arbitrators. He has over 16 years legal experience as he started practicing law in 1997, with Msungama and Company. He is one of the founding partners of TF and Partners. He is engaged in civil litigation and drafting of documents. He has a number of notable human rights publications including: *Dikastocracy in Malawi (2009)* and *Civil Procedure in Malawi (2011)*. Commissioner Chilenga came to the Commission with a passion for human rights and a special interest in championing prisoners' rights. He is responsible for the Civil and Political Rights, and Economic, Social and Cultural Rights Directorates and a member of the Upper Appointments and Disciplinary Committee. He is a member of the UN working group on Business and Human Rights.



**Commissioner Dalitso Kingsley Kubalasa** is an Economist by profession. He has over 15 years of experience in Development and Economic Policy Analysis and Management. He holds an advanced Master of Arts Degree in Development Evaluation and Management (with Distinction), from the University of Antwerp in Belgium. He also holds a Bachelor of Science Degree in Agriculture (Agricultural Economics) from University of Malawi. He is the Executive Director for the Malawi Economic Justice Network (MEJN), a pioneer institution in establishing and championing pro-poor and participatory economic governance in Malawi. He was, in December 2013 appointed as member of the 2nd cohort of the National Integrity Committee (NIC) which, among others; helps oversee the operationalisation of the National Anti-Corruption Strategy (NACS), in Malawi. He is responsible for the Economic, Social and Cultural Rights, and the Child Rights Directorates; besides also serving as Chairperson in the Commission's Finance and Audit Committee.



**Commissioner Mr. Benedicto Kondowe** holds a Masters Degree in Development Studies with Honours, obtained from the University of East Anglia, United Kingdom, and a Post Graduate Degree in International Human Rights, from Fahamu, Oxford University. He has previously worked with Centre for Human Rights and Rehabilitation, Catholic Relief Services, Malawi Country Programme, and the Royal Norwegian Embassy. He is currently the Executive Director for Civil Society Coalition for Education. He is also the Trustee Chairperson for the Council for Non Governmental Organisations in Malawi (CONGOMA), and the Vice Chairperson of the African Centre for Conflict Management and Transformation (Harare, Zimbabwe). He is Commissioner responsible for the Directorate of Civil and Political Rights and also serves as a member of the Upper Appointments and Disciplinary Committee.



**Commissioner Mr. Stephen Nkoka** is an Economist by profession. He holds a Masters Degree in Economics and Social Studies, a Bachelors Degree in Social Sciences, a University Certificate in Accounting and other professional certificates in civic and voter education, strategic planning, project cycle management, performance-based financing (PBF), results-Based Management, monitoring and evaluation, procurement, etc. Currently, he is working as a Monitoring and evaluation Manager at the Christian Health Association of Malawi (CHAM). Previously, he worked as a Programme Manager for the National Initiative For Civic Education (NICE), Deputy Programme Coordinator for 4th GoM/EU Micro-projects Programme, Deputy Head of Programming, Monitoring, Evaluation, and Learning for Catholic Relief Services, and Aid Coordinator for JICA/ Malawi. He brings more than 19 years of professional and practical working experience into the Commission. He is a Commissioner responsible for the Child rights Directorate, Women's Rights and Gender Directorate, and a member of the Finance and Audit Committee.



**Commissioner Mr. Rodgers Newa** holds a Bachelor of Social Science Degree (Honours), Social Work (Major) and Political Science (Minor), obtained from the Catholic University of Malawi. He holds a Commonwealth Diploma in Youth Development Studies from the University of Malawi-Bunda College in collaboration with the Zimbabwe Open University. Currently he is the Executive Director for Center for Youth and Children Affairs. A renowned Human Rights Campaigner, Commissioner Newa is a founding member of the Human Rights Consultative Committee (HRCC) and the first Chairman of HRCC from 2000- 2006. He is Commissioner responsible for the Directorates of Child Rights and Administration and Finance.



**Commissioner Mrs. G.L. Hiwa, SC**, is a Human Rights Commissioner by virtue of holding the position of Law Commissioner. She brings to the Commission her 19 years experience in diverse fields of law including, legislative drafting, civil litigation, prosecution and giving legal advice. She holds an LLB (Honours) Degree obtained at Chancellor College, University of Malawi and a Masters (LLM) in Legislative Drafting, with minors in Administrative and Constitutional Law. She started her career as a State Advocate in the Ministry of Justice and Constitutional Affairs (MoJCA). In her career at MoJCA she represented the Solicitor General and Secretary for Justice at various meeting and fora as an ex-officio member on various statutory bodies, being the legal advisor at negotiations with donors such as World Bank, Kuwait Fund, International Fund for Agricultural Development and Organization of Petroleum Exporting Countries. As a Commissioner she is responsible for Child Rights and Women and Gender Rights Directorates. She is also a member of the Finance and Audit Committee. The State President conferred on her the honour of Senior Counsel in August, 2012.



**Commissioner Justice Tujilane Chizumila** (Rtd) is a Human Rights Commissioner by virtue of her being the Ombudsman. She brings to the Commission her 30 years experience of working on legal issues and the judiciary, governance and democracy, human rights and rule of law, diplomacy and international relations issues at regional and international levels. She worked for 10 years with the Ministry of Justice in Tanzania under the Tanzania Legal Corporation and has served as a member of the Tanzania Law Society. In Malawi she has worked with Save the Children (US), UNHCR and has served as a legal advisor to many local and international organizations and companies such as Lilongwe City Assembly, Malawi Dairy Board, TAMA, and INDEFUND. As a Commissioner she is responsible for the Directorate of Disability and Elderly Rights and Administration.

# Management Team



**Mrs. Grace T. Malera**  
(Executive Secretary)



**Mr. Grant Kankhulungo**  
(Dir. of Economic, Social & Cultural Rights)



**Mr. Wycliffe Masoo**  
(Dir. of Disability and Elderly Rights)



**Mr. Aggrey Mwale**  
(Dir. of Administration & Finance)



**Mr. Emmanuel Konzakapansi**  
(Deputy Executive Secretary)



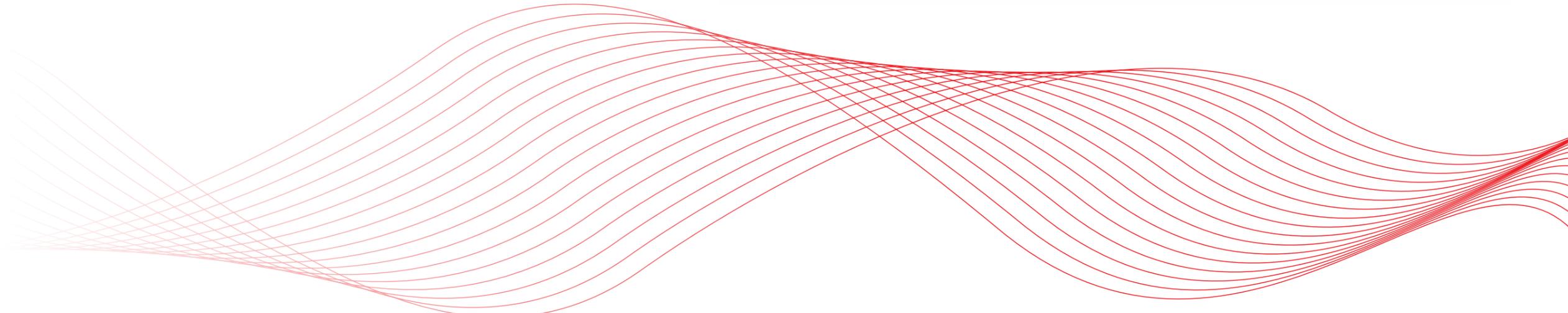
**Mrs. Noris Mangulama Chirwa**  
(Dir. of Child Rights)



**Mr. Michael Kakatera**  
(Dep. Dir. of Gender and Women's Rights)



**Mr. Charles Mhango**  
(Dir. of Civil and Political Rights)





that despite some progress that Malawi continues to register, many of the structural flaws in Malawi in the human rights architecture are still yet to be addressed. Until Malawi rectifies the structural and systemic factors that fuel the human rights violations, the situation will continue to register dismal progress at best and compounded retrogression at worst.

Moving on, 2014 presents a very critical juncture, as Malawi reels from the impact of all the highlighted human rights challenges of 2013. This year, Malawi also marks and celebrates its 50 years of independence. The other single most significant national event, slated for 20th May, 2014, is the Tripartite Elections that brings its own pressures and challenges for the human rights sector.

Against this background, it is therefore important that all players in the human rights and the broader governance sector refocus their attention on reinforcing human rights-based approaches, in both the public and private sector. This will ensure that the rights or claim holders are effectively mobilised and empowered to demand their rights, and to make informed choices on those that are to be entrusted with the powers of political leadership for the next five years. It will also ensure that elections are used as the occasion and yardstick to demand demonstrable accountability from those that hold public offices on behalf of Malawians. For once, the electoral processes, including campaigning can and should confront and also interrogate issues as opposed to mere propaganda and commercialisation of the ballot.

On the one hand, it would be interesting to see campaign debates and political rallies objectively and soberly addressing the vision of aspirants for the different political offices on strategies for addressing the litany of human rights-related challenges that the country is facing, most of which are perennial. Entrenching human rights principles and standards will also ensure that proper attention is put to the marginalised and the vulnerable of the society. On the other hand, it is also quite critical that relevant players should mobilise the electorate and raise the peoples' consciousness on the need to put in place a leadership that guarantees increased accountability 50 years after independence.

It is therefore about time that Malawi set up a leadership that that will not abuse its entrusted powers, particularly as we step into the next 50 years of independence, for Malawi to reverse the unfortunate trend of focusing on gains for a few people at a great cost for the majority. So, how best do we forge ahead? Better cooperation and coordination remains a priority. The values of integrity, patriotism and independence, for which the Commission as a national human rights institution, the civil society and public sector institutions, stand for still remain even much more relevant in 2014. Internally, the four

strategic objectives of the Commission's work as outlined in its 2011 to 2015 Strategic Plan, i.e. increased knowledge of human rights; improved respect for human right; enhanced cooperation with stakeholders; and, improved service delivery of the Commission, remain valid today as they were in 2011. The Commission should continue to work towards attainment of these outcomes.

To therefore ensure that 2014, as an elections year and a year for serious reflections realistically becomes a period that will usher in a real turnaround in the economic, political and social sectors of the country for the next 50 years, a number of things need to happen. For starters, the architecture for ensuring that

holders of public offices shall be fully accountable, acting in a transparent manner and fully upholding the human rights of the people, needs to be in place and effectively functional.

I therefore urge all stakeholders to use 2014 and the window of opportunity it offers to leverage the roles of all the players in the governance sector, as we all ensure that Malawi's democracy is effectively consolidated and that human rights principles and standards become entrenched in all sectors of society.

Ambassador Sophie Asimenye Kalinde  
Chairperson

Over the past year, the human rights sector found itself responding to several topical issues of national interest. Among others, issues of: the irregularities that surrounded the transfer of beds from Mponela Rural Hospital by the Vice President of the Republic of Malawi, Right Honourable Mr. Khumbo Kachali, to a local health facility in his constituency; the scarcity of maize in ADMARC Depots across the country; the rising cost of living; the scarcity of medicines and supplies in public medical facilities across the country; the irregularities that surrounded the Government's labour export programme to South Korea; interferences with the right to freedom of the press; a growing trend of hate speeches during political rallies; the Lake Malawi dispute between Tanzania and Malawi; implementation of section 65 of the Constitution of the Republic of Malawi; the issue of declaration of assets by the President, the Vice President and other Public Officers; and, most importantly, the issue of misappropriation of public resources through abuse of office, fraud and corruption, commonly referred to as "the cash gate scandal", presented some of the most pressing human rights challenges in 2013.

As a result, the country's human rights record registered retrogression in the preceding year. This trend highlights





an in-depth look into the International Human Rights Day Commemoration which was spearheaded by the Commission in conjunction with a number of stakeholders on 10th December, 2013. The report ends with recommendations to Government and other relevant stakeholders on the need to ensure that the Commission is fully capacitated to discharge its mandate effectively.

In terms of complaints handling, the report shows that the Commission saw a steady increase in the number of cases registered compared to those in 2012. In 2013, the Commission registered a total of 516 complaints signifying a 47% increase from the 351 complaints that were registered in 2012. The Commission attributes this increase to the reorganization of the Commission from functional approach to thematic approach where the Commission was able to enhance its capacity to generate the demand for its services in other thematic areas of human rights, including from vulnerable categories. This increase is also attributed to some massive human rights community sensitization campaigns that took place during the 16 Days of Activism on gender based violence period.

The report details several activities which the Commission carried out in 2013 in the area of civil and political rights, including, a judicial colloquium and a lawyers' seminar on sentencing guidelines in capital offences, which the Commission in collaboration with the Death Penalty Project (DPP) conducted. The meetings aimed at providing a platform for sharing developments and trends relating to sentencing in capital offences in Malawi and comparable jurisdictions and reflecting on the jurisprudential developments in sentencing procedures post the Kafantayeni judgement in Malawi. The Civil and Political Rights Directorate also contributed to various state party reporting programmes, including implementing a robust programme on the United Nations Universal Periodic Review.

The year 2013 saw the Commission successfully carrying out various human rights education, advocacy, and monitoring and research activities. These activities were undertaken to ensure that the Commission's voice is heard in order to influence and shape policy reforms and public discourse on human rights. In the area of human rights education, the Commission carried out a number of sensitization meetings and training workshops on various human rights issues such as Children rights; Economic, Social and Cultural rights; and the rights of Persons with Disabilities.

In the area of Research and Monitoring, the major activities that were undertaken were: a comprehensive monitoring of the human rights situation in Prisons in Malawi; monitoring of the human rights situation in selected Police holding cells; a Situation Analysis on the Elderly in Malawi; and, a study into



the Implementation of UPR recommendation. The findings of the Prison and Police cells monitoring exercises showed that congestion still remains a challenge in most prisons in Malawi and low levels of funding from government which makes it difficult for the Prison and Police to provide adequate food and health services. The monitoring also observed that torture was still widespread in police cells and that most prisoners and detainees live in degrading and inhuman conditions.

The Commission also monitored the availability of maize in ADMARC Depots throughout the country after it received complaints from the general public that ADMARC had started rationing the maize. In this respect, the Commission established that ADMARC was indeed rationing the maize at the point of sale, and further that the maize in very short supply in most depots. The Commission engaged ADMARC bearing in mind the implications of this situation for the realisation of the people in Malawi of their human rights, in particular the right to food. ADMARC informed the Commission that it is their policy to ration food to make sure the country does not run out of food stock before harvest time.

In addition, the Commission monitored health service delivery in public hospitals and health centers. The findings of the monitoring exercise were that most public hospitals were experiencing acute shortage of essential drugs and that the bed-patient ratio had increased drastically. The Commission recommended that government should scale up its funding to the health service and make sure that the funding is consistent in order to avert the problems of drug shortages.

Furthermore, the Commission conducted a number of public inquiries in a bid to clearly understand some systemic human rights violations. The Commission conducted public inquiries on the Status of the Human Rights of Persons with Disabilities; a public inquiry on Child Maintenance, and a public inquiry on access to justice by victims of gender-based violence. These inquiries provided the Malawian citizenry with forum to engage with the duty bearers through among other things testimonies on the challenges they face. The inquiries also analyzed the current legislations, policies and programmes for the two vulnerable groups, and made recommendations to government and other stakeholders on measures to address the several challenges that were brought to light during the inquiries.

The Report further outlines the various activities that were carried out by the commission's support directorate, the Corporate Services Directorate. Among other things, this section highlights issues of human resources, audit, procurement, library services, public relations, information and communication technology and financial management.

The Report concludes by highlighting the major challenges that the Commission faced, including: inadequate funding from Government; shortage of staff; inadequate equipment and inadequate and insecure offices. The Report ends with a major recommendation to the Government, development partners and other players to continue directing concerted efforts towards addressing these challenges, in order to ensure that the Commission is capacitated to a level where it can fully and effectively discharge its constitutional and statutory mandate.

The Commission's Annual Report gives a comprehensive overview of the Commission's activities over the past year, including information on the Commission's budgeting and staffing. It is intended to offer our stakeholders and other interested parties information about the Commission's activities and performance. Section 37 of the Human Rights Commission Act, (Chapter 3:08 of the Laws of Malawi), requires that the Commission prepares and submits annual reports capturing its activities in a given calendar year, to Parliament.

The Report gives an overview of 2013, and a detailed review of the Commission's main areas of activity: civil and political rights; economic, social and cultural rights; gender and women's rights; child rights; disability and elderly rights; and corporate services. The Commission's work related to complaints handling; human rights monitoring, research and advocacy, human rights education, information and training in all these areas is reviewed.

The Report starts with a foreword by the Commission's chairperson who reflects on the events of 2013 and the work that lies ahead in 2014. The main part of the report is divided into the six principal areas of activities. The report also features

## Background Information

### 1.0 Introduction

The Malawi Human Rights Commission (the Commission), is established under section 129 of the Constitution of the Republic of Malawi, (the Constitution). The mandate of the Commission as provided by the Constitution is broad, encompassing promotion, protection and investigation of violations of human rights. The Commission is further regulated by the Human Rights Commission Act (Cap 3:08 of the Laws of Malawi) in terms of its competence and powers, duties and functions, responsibilities and methods of operation.

Section 12 of the Human Rights Commission Act stipulates that; “The Commission shall be competent in every respect to promote and protect human rights in Malawi in the broadest sense possible and investigate violations of human rights on its own motion or upon complaints received from any person, class of person or body.”

### 1.1 Duties and Functions

The duties and functions of the Commission are stipulated in section 13 of the Human Rights Commission Act and these include:

- to act as a source of human rights information for the Government and the people of Malawi;
- to assist in educating the public on, and promoting awareness and respect for, human rights;
- to promote more particularly the human rights of vulnerable groups, such as children, illiterate persons, persons with disabilities and the elderly;
- to consider, deliberate upon, and make recommendations regarding any human rights issues, on its own volition or as may be referred to it by the Government;
- to study the status and effect of legislation, judicial decisions and administrative provisions for the protection and promotion of human rights and to prepare reports on such matters and submit the reports, with such recommendations or observations as the Commission considers appropriate, to the authorities concerned or to any other appropriate authorities; and,
- to perform any other function which the Government may assign to the Commission in connection with the duties of Malawi under those international agreements in the field of human rights to which Malawi is a party, without derogation from the fact that the Government shall remain primarily responsible for performing such functions.

In terms of section 14 of the Human Rights Commission Act, the Commission has the following responsibilities:

- to submit to the President, Parliament or any other competent authority, on an advisory basis, either at the request of the President, Parliament or such other authority or on its own volition, its opinions, recommendations, proposals or reports on any matters concerning the protection and promotion of human rights;
- to examine any legislation, judicial decisions or administrative provisions in force as well as bills and administrative proposals and make recommendations as it considers appropriate in order to ensure that such legislation, judicial decisions, administrative provisions, Bills and administrative proposals conform to the fundamental principles of human rights;
- where necessary, to recommend the adoption of new legislation or administrative provisions, or the repeal, replacement or amendment of legislation or administrative provisions in force and relating to human right;
- to comment publicly or as it sees fit on any general or specific situation of violation of human rights and recommend initiatives or measures to put an end to such a situation;
- to promote ratification by Malawi of any international human rights instruments;
- to promote the harmonization of national legislation and practices with international human rights instruments to which Malawi is a party and to promote and monitor their effective implementation;
- to contribute to the reports which Malawi is required to submit pursuant to treaty obligations and, where necessary, express its opinions on the subject matter but always with due regard to its status as an independent national institution;
- to co-operate with agencies of the United Nations, the African Union, the Commonwealth and other multilateral or regional

- institutions and national institutions of other countries which are competent in the area of protection and promotion of human rights;
- to assist in the formulation of programmes for the teaching of, and research in, human rights and, where appropriate, to take part in their execution in institutions and other bodies, including in schools, universities and professional circles;
- to publicize human rights with the aim of increasing public awareness;
- to promote ratification by Malawi of any international human rights instruments; and,
- to contribute to the Reports which Malawi is required to submit pursuant to treaty obligations and where necessary, express its opinions on the subject matter but always with due regard to its status as an independent national institution.

### 1.2 The Vision, Mission, and Goals of the Commission

The Commission is further guided by the 2011-2015 Strategic Plan in its operations towards the realisation of its mandate of promotion and protection of human rights. The vision, mission, values and goals of the Commission are the following:

#### VISION

“A Malawi society where human rights are respected and enjoyed by all – where freedom, justice, peace and prosperity exist.”

#### MISSION

“To lead the protection and promotion of human rights, to provide access to effective remedies for human rights grievances and to develop a culture of respect and responsibility for human rights by Government, its agencies, private sector institutions and all peoples in Malawi.”

#### VALUES

Non-partisanship; Loyalty to the Constitution; Independence in operations; Fairness and Impartiality; Transparency and Accountability; and Integrity.

The Goals that guide the Commission as outlined in the Strategic Plan are:

- people in Malawi, particularly the most vulnerable groups, know, understand and freely exercise their human rights;
- the authorities in Malawi, including the private sector, respect people’s rights including the economic, social and cultural rights, and are held responsible when those rights are violated;
- effective partnership with official and non-governmental organizations and other civil society organizations and enhancement of their human rights capacity; and
- the consolidation of the Commission as a visible, accessible, outcome-oriented and effective natural focal point for human rights promotion and protection.

### 1.3 Organizational Structure

The Commission comprises 9 Commissioners, 7 of whom are appointed members and 2 of whom are members by virtue of holding the post of Law Commissioner and Ombudsman respectively.

The Commission has a Secretariat that has 6 Directorates, as follows:

- Directorate of Civil and Political Rights;
- Directorate of Economic, Social and Cultural Rights;
- Directorate of Gender and Women’s Rights;
- Directorate of Child Rights;
- Directorate of Disability and Elderly Rights; and
- Directorate of Corporate Services.

## Complaints Handling

### 2.0 Introduction

The Commission is mandated by section 130 of the Constitution, to investigate complaints of human rights violations, upon receiving applications from an individual or class of persons, or on its own motion, with a view to making recommendations to relevant parties or authorities on effective remedies. The handling of complaints of human rights violations is one of the core functions of the Commission. Part IV of the Human Rights Commission Act, sets out the modes of operation, which guide the Commission's complaints handling process.

The Commission handles the complaints it receives through several mechanisms, including: investigations; provision of legal advice; referral of cases to institutions with requisite jurisdictions; alternative dispute resolution (ADR) through hearing, mediation and conciliation; and, litigation.

In order to facilitate an effective referral mechanism, the Commission works in close collaboration with other case or complaints handling institutions such as the Office of the Ombudsman; the Anti-Corruption Bureau (ACB); the Judiciary; the Malawi Police Service; Ministry of Justice and Constitutional Affairs; Ministry of Gender, Children and Social Welfare (in particular the District Social Welfare Offices) and the District Labour Offices. The Commission furthermore works hand in hand with non-state actors such as Civil Society Organizations (CSOs) and Community Based Organizations (CBOs) in the handling of human rights violation cases.

### 2.1 Case Statistics

In 2013 the Commission continued to receive and handle complaints of human rights violations and, in some instances, it took up matters on its own volition. The complaints handled broadly related to the areas of: civil and political rights; economic, social and cultural rights; child rights; gender and women's rights; and disability and elderly rights. The complaints were received by the Commission from individuals, group of individuals or their representatives; third parties and non-governmental organizations (NGOs), among others.

A total of 516 complaints were registered signifying a 47% increase from the 351 complaints that were registered in 2012. The Commission attributes this increase to the re-organization of the Commission from a functional approach to a thematic approach, where the Commission has been able to enhance its capacity to generate the demand for its services in other thematic areas of human rights, including from vulnerable categories.

Table 1 below indicates the number of cases registered by the Commission by category of rights.

Category of right	No of complaints registered	Percentage of Total
Child rights	61	11.8%
Civil and political rights	147	28.4%
Gender and women rights	66	12.7%
Economic social and cultural rights	200	38.7%
Disability and elderly rights	42	8.1%
<b>TOTAL</b>	<b>516</b>	

Table 1: Table showing cases registered according to category of right

### 2.1.1 Nature of complaints registered

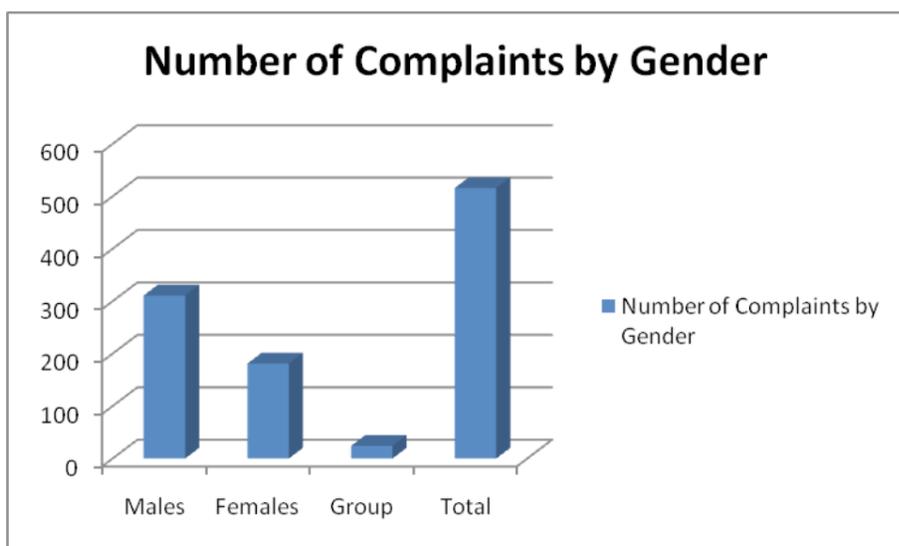
Table 2 below shows the case statistics in accordance with the specific nature of the human rights which were violated.

Nature of alleged violation	Right violated	Case registered
Right to Fair Labour Practices	Economic social and cultural	97
Right to Access to Justice	Civil and political	76
Right to Human Dignity	Civil and political	17
Child Rights	Child rights	61
Right to Life	Civil and political	8
Right to fair trial	Civil and political	4
Right to administrative justice	Civil and political	13
Right to property	Economic social and cultural	59
Right to economic activity	Economic social and cultural	16
Right to food	Economic social and cultural	4
Right to freedom of Assembly	Civil and political	2
Right to Land	Economic social and cultural	30
Right to health	Economic social and cultural	9
Right to family life and marriage	Civil and Political	41
Right to personal liberty	Civil and political	18
Right to education	Economic social and cultural	8
Rights of refugees and asylum seekers	Civil and political	3
Right to equality	Civil and political	8
Right to information	Civil and political	4
Right to culture and language	Economic social and cultural	1
Right to freedom of Religion and Conscience	Economic social and cultural	1
Right of prisoners and detained persons	Civil and political	26
Women's rights	Gender and women	11
Disability rights	Disability rights	8
<b>TOTAL</b>		<b>516</b>

Table 2: Table showing cases registered by nature of alleged human rights violations

### 2.1.2 Cases registered according to gender

The Figure below shows the total number of complaints registered according to gender. The figure shows that in 2013 most complaints, i.e. a total of 248 representing 63%, were lodged to the Commission by males compared to 115 complaints by females. Further analysis shows that 50 % of the cases submitted by males were made on behalf of their female counterparts typifying the social norms and power dynamics that exist between males and females in Malawi, which put women and girls in a position of dependence on males.



### 2.1.3 Cases registered according to districts

Categorization of cases received by district in the figure 1 below shows that most of the cases in 2013 were from Lilongwe district at a total of 312 cases representing 60.4%. Mzimba and Karonga districts came second and third with 28 and 24 cases representing 5.4% and 4.6% respectively. It should be noted that while the Commission's regional office in Blantyre is operational, many people are not aware of its existence. This thus calls for the Commission to put in place a strategy that would make Malawians in the southern and eastern regions fully utilize the Blantyre Office. It is also critical that Government should follow through with its commitment on the establishment of a regional office for the Commission in the northern region, through provision of the necessary and adequate funding. This will contribute to an increased accessibility of the Commission's services by the people in the northern region.

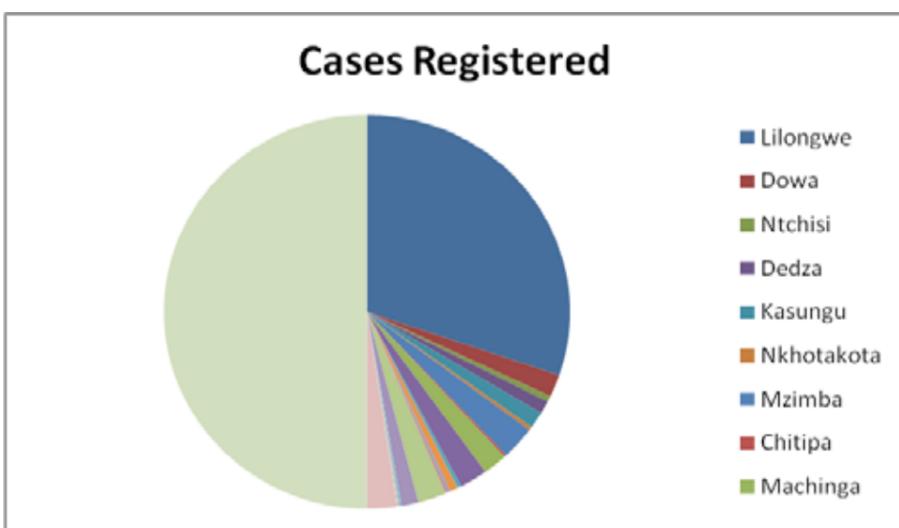


Figure 1: Cases Registered by the Commission in 2013

### 2.1.4 Summary of cases handling statistics

Table 3 shows a summary of the complaints which were handled during the reporting period in accordance with human rights, form of violation and mode of handling of the complaints.

CATEGORY OF HUMAN RIGHTS	Cases Received	Cases Under Investigation	Cases under ADR	Cases Under Legal Action	Cases resolved way of advice	Cases Referred	Resolved / Concluded through investigation / legal action
Right to Fair Labour Practices	97	35	12	0	26	22	1
Right to Access to Justice	76	54	0	3	15	4	0
Right to Human Dignity	17	13	0	0	2	1	1
Child Rights	61	52	0	0	0	6	3
Right to Life	8	8	0	0	0	0	0
Right to fair trial	4	2	0	0	1	1	0
Right to fair administrative justice	13	8	0	0	2	3	0
Right to property	59	51	0	0	4	4	0
Right to economic activity	16	13	0	0	1	2	0
Right to food	4	3	1	0	0	0	0
Right to freedom of Assembly	2	2	0	0	0	0	0
Right to Land	30	24	3	1	3	0	0
Right to health and social services	9	9	0	0	0	0	0
Right to family life and marriage	41	31	0	0	9	1	0
Right to personal liberty	18	15	0	0	2	1	0
Right to education	8	8	0	0	0	0	0
Rights of refugees and asylum seekers	3	3	0	0	0	0	0
Right to equality	8	8	0	0	0	0	0
Right to information	4	2	0	0	2	0	0
Right to culture and language	1	0	0	0	1	0	0
Right to freedom of Religion and Conscience	1	1	0	0	0	0	0
Right of prisoners and detained persons	26	15	0	11	0	0	0
Women's rights	11	8	0	0	2	1	0
Disability rights	8	8	0	0	0	0	0
<b>TOTAL</b>	<b>516</b>	<b>364</b>	<b>16</b>	<b>15</b>	<b>70</b>	<b>46</b>	<b>5</b>

Table 3: The status of complaints with the focus on nature of the alleged human rights violation and mode of handling the complaint

## Civil and Political

### 3.0 Introduction

The Government of Malawi is a State party to the United Nations International Covenant on Civil and Political Rights (ICCPR), and therefore has the duty to comply with the provisions of the ICCPR. The ICCPR spells out several human rights which people must enjoy at all times with corresponding responsibilities, such as the right to self-determination, the right to equality, the right to life, and the right not to be subjected to torture, cruel, inhumane or degrading treatment or punishment. In 2013 the Commission carried out several activities on the thematic area of civil and political rights. These included: human rights monitoring, complaints handling, advocacy and education.

### 3.1 Human Rights Monitoring

#### 3.1.1 Monitoring of Police Cells

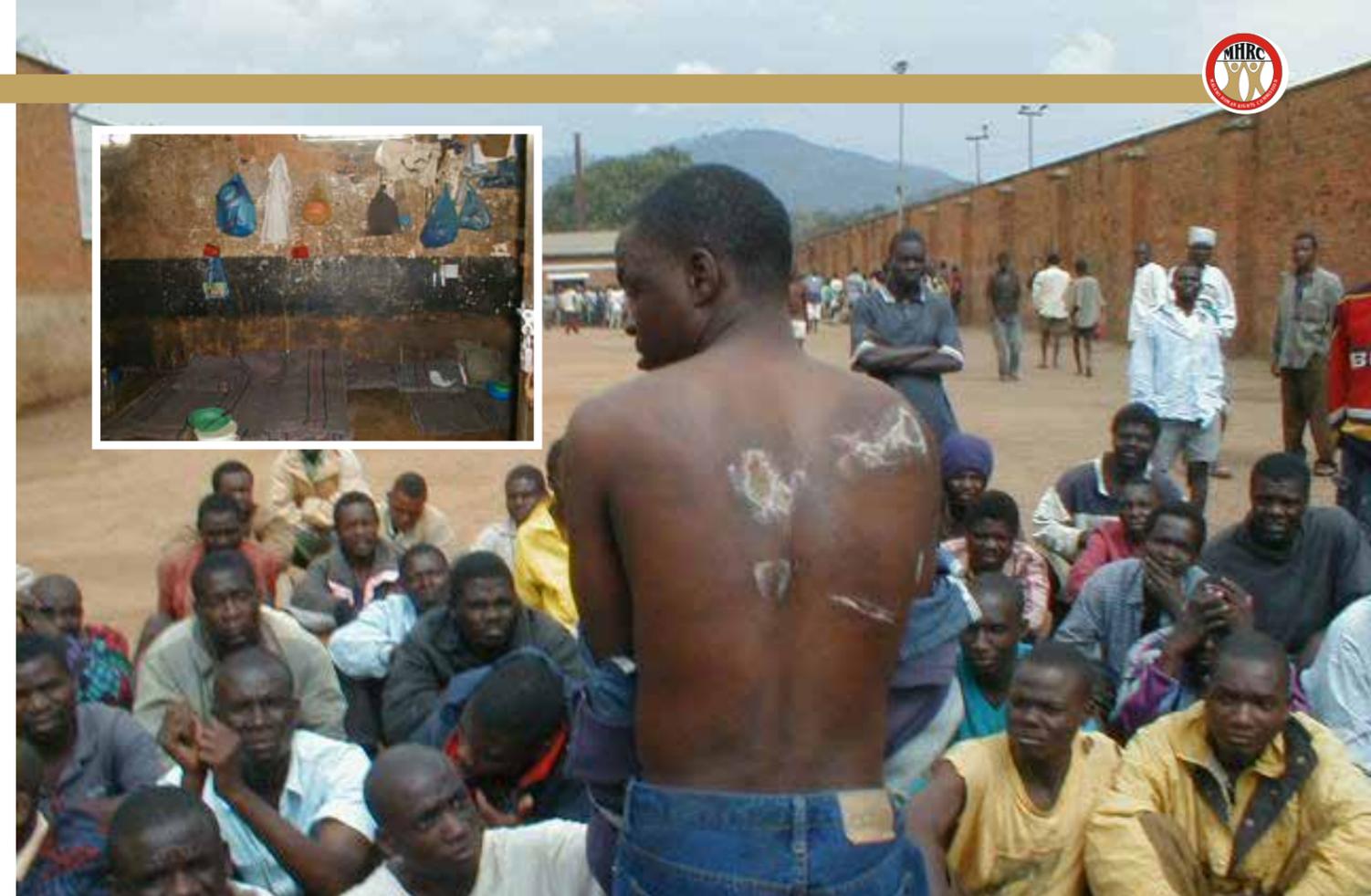
The Commission monitored the situation in police cells in all the districts in the Northern Region of Malawi, except Likoma District due to logistical challenges. The exercise was undertaken from the 16th to 21st September, 2013, with funding support from the EU - Democratic Governance Programme. The main aim of the exercise was to assess the human rights situation in the police cells.

The objectives of the exercise were: to collect information from suspects under Police custody and from Police officers, on whether the due process of the law is followed by Police Officers in their handling of suspects from the time of arrest to the time of disposal of cases; to assess general living conditions of arrested persons in Police stations, units and posts and whether they are in conformity with prescribed human rights standards; and to assess the extent to which arrested persons under Police custody appreciate, exercise and enjoy their rights; and, to make recommendations to relevant authorities on ways to promote and protect the rights of detained persons under Police custody.

#### 3.1.2 Dissemination of the Prison Monitoring Report

The Commission, with funding from the EU – Democratic Governance Programme (DGP) funding, conducted a prison monitoring report dissemination workshop on 29th April, 2013, at Lilongwe Sunbird Hotel in Lilongwe. The Commission previously undertook a similar monitoring exercise from December 2011 to March 2012. The main objectives of the monitoring exercise were: to assess the extent to which institutions like the Malawi Prison Service (MPS) are adhering to the principles of human rights in the provision of their services to persons in detention; to increase human rights compliance in Prisons; and, to recommend to relevant authorities on appropriate action for the promotion and protection of the rights of prisoners.

The objectives of the dissemination workshop were primarily two-fold; to share the findings of the monitoring with various stakeholders and, to seek input from different stakeholders on the way forward. The participants to the workshop came from Malawi Prison Service, Malawi Police Service, Malawi Prison Inspectorate, development partners, members of different media houses and from Civil Society Organisations in the country. At the end of the workshop, several comments were made and some amendments to the report were adopted. The Commission incorporated the input gathered at this meeting in the final report which was printed later in the year. The report is available on request from the Commission's Resource Center.



**A prisoner demonstrating to MHRC Officers wounds that he sustained from torture and cruel treatment he received at the hands of the authorities  
Insert: deplorable sleeping conditions in prisons**

#### 3.1.3 Periodic Monitoring of the Situation of Human Rights in Malawi

The Commission undertakes periodic monitoring of the situation of human rights in Malawi, in accordance with section 14(a) of the Human Rights Commission Act. The Commission submits its reports to the President, Parliament or any other competent authority, on an advisory basis, either at the request of the President, Parliament or such other authority or on its own volition. In May 2013 the Commission compiled a report on the status of human rights in Malawi, covering the period January 2013 to May 2013. The following are some of the highlights of the report and the recommendations that were made with respect to the civil and political rights issues:

##### a) Interference with the right to freedom of the Press

The Commission noted developments relating to the approach adopted by the Presidency towards the media that pointed towards political interference with the right to freedom of the press and an emerging pattern of undue suppression of the media. It was noted that on various occasions, the State President had expressed misgivings about the way some media houses and journalists operated and covered some of the stories and events relating to the Peoples Party led Government. For instance, it was on public record that in a meeting between officials of MISA-Malawi and the State President at Sanjika Palace in Blantyre on 22 April, 2013, the President condemned the media for being critical against her Government.

The Commission noted that such statements by the President have the potential to lead to undue suppression of the media. In this regard, the Commission emphasised the provision in article 19 of the ICCPR and section 36 of the Constitution of Malawi, which accord the media the right to publish freely within Malawi and abroad, subject to the standards for limitation of human rights and freedoms stipulated in section 44 of the Constitution. Section 44 provides that, any limitation of human rights and freedom is only acceptable if it is provided by law, if it is reasonable and necessary in an open and democratic society and if it does not negate the essential content of the right in question. To this end, the Commission noted that the standards for limitation of rights do not cover situations where the contents of the publication do not meet the taste of a particular person or authority, while at the same time it does not permit the exercise of this right by the media, without regard to attendant responsibilities.

Furthermore, the Commission buttressed the fundamental role of the media as a conveyor of information to members of the general public and as a tool for enhancing transparency and accountability in processes relating to public funds and services. In particular, the Commission took note of media reports that uncovered incidences of fraud, corruption and irregular procurement related to public services or goods.

The Commission called upon public officers to desist from making comments that potentially or actually compromise fundamental human rights and freedoms, in particular the right to freedom of the press.

### **b) Growing Trend of Hate Speech**

In the status of human rights report, the Commission took note of the growing trend of hate speech during political rallies, particularly as uttered by officials of the ruling Peoples' Party (PP) against opposition party leaders.

The Commission noted that hate speech violates article 19 of the ICCPR and section 34 of the Constitution which provides for the right to hold opinion without interference, as well as section 40 of the Constitution which provides for political rights and freedoms. The Commission emphasized that the right to freedom of expression does protect hate speech against particular persons or groups of persons on account of political differences.

The Commission called upon all politicians to desist from utterances that fall within the realm of hate speech and to ensure that their conduct as public figures and politicians is based on the values of civility and a high sense of decorum. The Commission further emphasised the point that in the run up to the 2014 Tri-partite Elections, it is important that politicians should desist from making derogatory and inflammatory speeches against other political leaders, as such incidences influence elections-related violence. Furthermore, the Commission encouraged politicians, their supporters and the public at large to focus on issues and not personalities and to exercise tolerance. The Commission called on stakeholders in the 2014 Tripartite Elections to scale up efforts to build capacity in the political and electoral system and ensure the exercise of restraint and tolerance in political process.

### **c) Monopolization of the State Broadcaster**

The Commission reiterated the concern it had raised in its preceding report on the monopolization of the state broadcaster by the ruling PP. To this end, the Commission noted that the State broadcaster continued to cover news in a highly biased manner, whereby the ruling PP was given greater coverage, whereas opposition parties were given skewed or no coverage at all. In particular, political meetings and other events by the ruling PP tended to have unfair advantage in terms of coverage on the state broadcaster while the opposition seldom received coverage on the national broadcaster.

The Commission emphasized the pivotal role played by the public media with respect to the realization of the right to access to information and the need for the public media to be accessed and utilized by all people in Malawi. In this regard, the Commission urged the public broadcaster to ensure unbiased coverage of news.

### **d) Monitoring of voter registration exercise**

Pursuant to its broad mandate and functions as set out in the Human Rights Commission Act (Cap.3:08 of the Laws of Malawi), the Commission undertakes monitoring of elections. Monitoring of elections and electoral processes ensures the protection and promotion of political rights enshrined in section 40 of the Constitution and other attendant rights.

On 20th May, 2014, Malawi will conduct Tri-partite Elections to elect a President, Members of Parliament and Ward Councilors. The voter registration exercise for the 2014 Tri-partite Elections started in August 2013. The Commission conducted monitoring of the voter registration exercise in a number of districts including Phalombe, Mulanje, Mchinji, Kasungu and Lilongwe. The voter registration monitoring exercise established a number of irregularities which were brought to the attention of the relevant authorities, including the Electoral Commission.

The Commission will continue to monitor the other stages of the electoral process and engage relevant duty bearers. The findings of the monitoring will lead to the compilation of an Elections Monitoring Report, which will primarily assess the freeness, fairness and credibility of the 2014 Tripartite Elections.

## **3.1.4 Monitoring of Demonstrations**

### **a) Monitoring of the 17th January, 2013 Demonstrations**

On 17 January, 2013, the Consumers Association of Malawi (CAMA) held demonstrations in Blantyre, Lilongwe and Mzuzu to protest against the economic hardships that Malawians were facing following the economic policy reforms introduced by the Government in 2012. CAMA observed that the economic policy reforms resulted in high inflation leading to high cost of living and unemployment. The Commission monitored the demonstrations in the three cities as per its constitutional mandate to promote and protect human rights, which includes monitoring situations which are prone to human rights violations and abuses.

The main goal of monitoring the demonstrations was to enhance the promotion and protection of human rights, inter alia respect for freedom of assembly, freedom of expression and peaceful demonstration. The exercise involved monitoring events prior, during and after the demonstrations. Prior to the demonstrations, the Commission issued a press statement addressing pertinent issues ahead of the demonstrations. In the related vein, the Commission, through the office of the Chairperson, engaged key stakeholders on the issue of the demonstrations, including, the Inspector General of Police, the Executive Director of CAMA, the Police and concerned civil society organisations in Mzuzu and Karonga. During the demonstrations, the Commission conducted roving monitoring of the demonstrations in Lilongwe, Blantyre and Mzuzu. The Commission's major finding following its monitoring exercise was that the 17th January, 2013, demonstrations were peaceful.

### **b) Monitoring of the 10th October, 2013 Demonstrations**

On 10th October, 2013, CAMA held further demonstrations in Lilongwe. The demonstrations were aimed at expressing the concern of the citizenry on the rampant mismanagement of public finances by civil servants at the Capital Hill. The demonstrations' procession started from the Parliament Building roundabout up to the Civic Offices, where the demonstrators presented a petition to the Chief Executive Officer for Lilongwe City Assembly.

The main goal of the Commission in the monitoring exercises remained to enhance the promotion and protection of the right to freedom of assembly, freedom of expression and holding of peaceful demonstration. The Commission's duty was also to monitor the conduct of State authorities, particularly towards ensuring that they would not unlawfully interfere with the freedom of assembly and association, and the right to hold demonstrations, peacefully and unarmed as guaranteed in the Constitution. The Commission noted that the demonstrations were conducted peacefully.

## **3.2 State Party Reporting**

The Commission plays an instrumental role in facilitating the compilation of State party reports by the Government of Malawi to the relevant bodies within the United Nations and African Commission Human Rights system. In 2013, the Commission undertook several activities with respect to State party reporting as outlined below.

### **3.2.1 Engagement with the Ministry of Justice and Constitutional Affairs on Malawi's outstanding State Party Reporting Obligations**

The Commission engaged the Ministry of Justice on the issue of outstanding State party reports to both the United Nations and the African Commission on Human and Peoples Rights. The Table 4 below represents the outstanding reports that the Commission raised with the Ministry of Justice and Constitutional Affairs.

Table 4: Status of Malawi's Compliance with State Party Reporting Obligations under the AU and UN Human Rights Systems (as of 2013)

No.	Instrument	Date of Ratification/Accession	State Party Reporting Status
1.	Constitutive Act of the African Union (abrogated and replaced the OAU Charter)	03rd February, 2003	No state party reporting requirement obligation imposed by the Instrument
2.	African Charter on Human and Peoples' Rights	17th November, 1989	None
3.	African Charter on the Rights and Welfare of the Child	16th September, 1999	None (No report ever submitted)
4.	AU Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women	25th May, 2005	None (No report ever submitted), reports are supposed to be submitted under article 62 of the African Charter on Human and Peoples Rights. Malawi has not submitted any report under this provision.
5.	Convention Governing the Specific Aspects of Refugee Problems in Africa	4th November, 1987	(Convention does not impose reporting obligations on signatories)
6.	UN International Covenant on Civil and Political Rights	22nd December, 1993	Report submitted March 2012, Malawi Government is yet to appear before the Committee
7.	UN International Covenant on Economic, Social and Cultural Rights	22nd December, 1993	None
8.	UN Convention on the Elimination of all Forms of Discrimination Against Women	12 March 1987	Report last submitted in 2008.
9.	UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	11th June 1996	None
10.	UN Convention on the Rights of the Child	2nd January 1991	Initial Report submitted in the year 2000, and second periodic state party report was submitted in the year 2009.
11.	UN Convention on the Political Rights of Women	1996	None (no report ever submitted)
12.	Un Convention on the Nationality of married women	1997	None (no report ever submitted)
13.	United Nations Convention against Transnational Organized Crime	17 Mar 2005	None
14.	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Preamble, supplementing the United Nations Convention against Transnational Organized Crime	17 March 2005	None
15.	UN Convention on the Elimination of all Forms of Racial Discrimination	11th June 1996	None
16.	UN Convention relating to the Status of Refugees	10th December 1987	None

### 3.2.2 *Compilation of the Report on the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples Rights*

The Commission played an instrumental role in the compilation of the reports on the ICCPR and ACHPR through its membership to the two report compilation taskforces that were set up by the Ministry of Justice and Constitutional Affairs (MoJCA). The Commission along with other players carried out the bulk of the research and provided the information that contributed to the compilation of the reports. Further, the Commission with funding from the European Union DGP organised some of the meetings of the task forces. The process of compiling the reports was finalised and Government submitted the reports to the United Nations Human Rights Committee and the African Commission on Human and Peoples Rights respectively. Malawi is scheduled to appear before these reporting bodies to defend the reports in 2014.



**Part of Stakeholders on State Party Reporting processes**

### 3.2.3 *Monitoring of Government's implementation of the United Nations Universal Periodic Review Recommendations*

The Government of Malawi presented its last state party report to the United Nations (UN) Human Rights Council's Working Group on the Universal Periodic Review (UPR) on the human rights situation in Malawi way back on 1st November, 2010. The UPR is a new and unique human rights mechanism established by the Human Rights Council of the UN created through the UN General Assembly, aimed at reviewing and assessing the performance of member states on human rights issues. Following the review, Malawi received 127 recommendations, 65 of which were accepted, 39 did not enjoy the support of the Malawi Government while Malawi deferred 23 recommendations pending further consultations. Subsequently, Malawi submitted its position on the remaining 23 recommendations in February 2011, which were adopted during a plenary on 16th March, 2011. In the end, Malawi accepted 71 recommendations, rejected 44 and provided general responses to 14 recommendations without taking a clear stand.

In a summary, the Government of Malawi accepted the following recommendations, among others:

- i. repealing or reforming discriminatory laws against women and girls;
- ii. promoting women's rights by tackling violence against women and ensuring increased participation of women, including rural women in political and decision making structures;
- iii. promoting children's rights; e.g. combating child trafficking and child exploitation;
- iv. promoting prisoners rights, e.g. improving prison conditions and putting in place measures for total abolition of torture and ill-treatment of prisoners;
- v. undertaking law reform or review activities on various laws touching on human rights;
- vi. strengthening of human rights institutions;

- vii. raising public awareness on human rights;
- viii. promoting socio-economic development and combating poverty;
- ix. strengthening cooperation with regional and international human rights mechanism;
- x. promoting freedom of religion, press, assembly, opinion and expression, promoting the right to food, including strengthening agriculture and food security; and,
- xi. promoting the right to health including improving conditions in hospitals, improving maternal and child health and increased responses to HIV and AIDS.

The following recommendations did not enjoy the support of the Malawi Government:

- i. adopting a comprehensive social security system;
- ii. making primary education compulsory;
- iii. abolition of the death penalty;
- iv. outlawing discrimination on the basis of sexual orientation and decriminalising same sex relationships; and
- v. reviewing punitive provisions in laws on abortions.

Cognizant of the fact that without the continued engagement of stakeholders on the effective implementation of the UPR recommendations, the enormous potential that the mechanism holds of acting as an accountability system for states at the national and international level, and a system for driving states towards the fulfillment of their state party obligations, stands to be eroded significantly, the Commission developed a comprehensive programme on the UPR. In 2013, the Commission continued to implement its programme on the UPR process and undertook several strategic activities to ensure that Malawi puts in place an effective system for implementation of recommendations.

First and foremost, the Commission mobilised financial resources that were used for the robust implementation of activities on the UPR. In this regard, a proposal was submitted to the Open Society Initiative for Southern Africa (OSISA), who funded the Commission's activities relating to the UPR. Some of the UPR activities were funded by UNDP. Some of these activities were as follows:

#### a) Compilation of a Booklet on UPR

The Commission compiled a Booklet on the Malawi UPR process. The Booklet summarises what the UPR entails and its relevance and significance to Malawi, where the issue of human rights promotion and protection is concerned. Further, the Booklet details Malawi's involvement in the process, the recommendations that the UN Human Rights Council made to Malawi and the roles of key stakeholders in ensuring that these recommendations, especially the ones that the Government accepted, are followed through with effective implementation. The Booklet was disseminated to various categories of stakeholders at district and national level.

#### b) Stakeholder Engagement

The Commission engaged district and national level stakeholders and carried out an assessment to determine whether stakeholders and the public were generally aware of the UPR process as well as of the recommendations that were accepted by the Government of Malawi. The assessment established that critical stakeholders such as Parliament and members of District Executive Committees were not aware of the UPR and what it entails. Further, it established that they were not aware of Malawi's review and the outcome report was not shared and publicized by Government after its adoption.

The Commission therefore took up the responsibility of sensitizing stakeholders on the UPR process, the recommendations by the UN Human Rights Council following Malawi's review, the monitoring mechanisms and the reporting expectations. 28 sensitization meetings with District Executive Committees (DECs) were conducted in line with the decentralization dynamics. Malawi has a decentralized system of Government where implementation of Government's policies and programs is transferred from the central level to the district councils. The DEC is a technical advisory body of the council and is meant to facilitate the district development planning process and implementation of the district development plan. The sensitizations were done so that various stakeholders could identify the recommendations relating to their sectors and contribute to the implementation of such recommendations. It comprises heads of council directorates, NGOs, and other Government institutions in the district.

#### c) UPR Meetings with Parliamentary Committees

The Commission continued to hold meetings with Parliamentary Committees on: Legal Affairs; Defence and Security; Public Appointments and Declaration of Assets; and, the Women's Parliamentary Caucus which it started in 2012. These meetings were held on 26th February, and 27th February, 2013. The aim of the meetings was to sensitize and inform members of Parliament on the UPR process, the recommendations that were made to Malawi and the role of Parliament in ensuring that Malawi meets its commitments under the UPR process. The Parliamentary Committees pledged to work with the Government in implementing the recommendations as well as working with the Commission in monitoring the implementation of the recommendations.



*Chairperson of the Women's Caucus in Parliament Hon. Chazama and Chairperson of the Parliamentary Legal Affairs Committee Hon. and Msukwa and Commissioners of MHRC presiding over a UPR Consultation Meeting with Members of Parliament*

#### d) UPR Process Workshop with all Media Houses in Malawi

The Commission conducted a sensitization workshop for the media on 16th January, 2013, with the aim of: sensitizing the media on the UPR process and the recommendations that were made to Malawi; identifying and clarifying the role of the media in the UPR process such as publicizing the UPR process; the dates for the next review of Malawi; processes for compilation of the UPR report; and the role of the media in monitoring the implementation of the UPR Recommendations. The media committed to monitor the implementation of the Recommendations and implement those that directly relate to them especially those on freedom of the press. The workshop also served as a forum to provide an update on the implementation of some of the Recommendations. Following the meeting, there were articles on UPR and the UPR recommendations published and broadcasted by the media.

#### e) UPR Process Workshop with Key Government Ministries and Departments

The Commission held a meeting with key Government Ministries and Departments on 17th January, 2013. The meeting aimed at introducing the concept and process of UPR to the officials from Government Ministries and Departments; explaining the recommendations made to Malawi by the Human Rights Council; discussing the roles of the different Government Ministries and Departments with respect to the different recommendations; discussing the need for a framework for monitoring implementation of the UPR commitments; discussing preparations for the reporting and next reviews of Malawi; and adopting modalities for the facilitation of a working relationship between the Commission; and Government Ministries and Departments in implementing and monitoring the UPR recommendations.

The meeting agreed on the need to strengthen the National Taskforce on UPR so that it can effectively lead the UPR process in the country, including developing a national framework for implementation and monitoring the implementation of the UPR commitments. The members indicated that some of the recommendations are already being implemented and would work with the Commission in providing an update on the progress of the implementation and how the remaining recommendations would be mainstreamed.

#### **f) Compilation of a mid-term progress report on the implementation of the United Nations Universal Periodic Review**

The Commission compiled a mid-term progress report on the implementation of the UPR Recommendations. The report was submitted to the Human Rights Council in 2013. The Commission engaged various methodologies to collect data for the compilation of this Report, including literature review. Other methods used were the administration of questionnaires which were administered to various Government Ministries and sectors to monitor progress in the implementation of the recommendations. Some of the Ministries and Departments were: Justice and Constitutional Affairs; Home Affairs and Public Security; Gender, Children and Social Welfare; Education and Vocational Training; Health; Disability and Elderly; Economic Planning and Development; Information and Civic Education; Water Development and Irrigation; Department of Nutrition and HIV and AIDS; Malawi Police Service; and Malawi Prison Service. The Commission received positive response and cooperation from all Ministries and Departments, except for the Ministry of Health, which did not send any responses.

The Commission further held consultations with members of DECs in order to gather data that would help inform its assessment of the progress in the implementation of the Recommendations. This was done with the aid of a semi-structured questionnaire. In the mid-term progress assessment report, the Commission concluded that Government had made significant progress in implementing the recommendations made by the Council, including in the areas of legal reforms, respect for the rule of law and promoting and protecting human rights especially for the vulnerable groups. Further to that, there was nonetheless a need for Government to do more on: poverty alleviation; ensuring food security; provision of quality service delivery so as to fulfill the commitments it made to the Council and the People of Malawi; and, ratification some of the treaties recommended for ratification and domestication of all treaties that Malawi is a Party to.

#### **3.2.5 Working Session on the Preparation of a State Party Report on the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment**

Malawi ratified the International Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment (CAT). Having ratified CAT, Malawi accepted the obligation to implement the provisions of the convention by among other things ensuring that national laws comply with the provisions of the convention. Each State Party to the Convention also assumes a duty to submit periodic reports to the convention's monitoring body describing efforts undertaken to comply with the convention. The Commission noted that as a State Party to CAT, Malawi has not submitted any report on CAT. In this regard the Commission, in conjunction with MoJCA facilitated a working session on the preparation of a State Party Report on CAT, with funding from the EU-DGP. The working session was convened in order to hold preliminary discussions on the State party report compilation process on CAT. The working session involved various stakeholders including, MoJCA, Malawi Prison Service, Malawi Prison Service, the National Assembly, and other non-state actors, including CSOs and the media.



*Stakeholders attending a working session on the compilation of a State Party Report on the United Nations Convention Against Torture (CAT)*

#### **3.2.6 Engagement with the African Commission on Human and Peoples' Rights**

The Commission attended the 54th Session of the African Commission on Human and Peoples Rights in Banjul, the Gambia which ran from 22nd October to 5th November, 2013. The Commission made the following presentations during the session: the status of human rights in Malawi; and, the status of human rights in the extractive industry in Malawi; human rights in prisons and Police cells. Altogether, 588 delegates participated in the Session. Of these, 132 represented 24 State Parties, 7 represented African Union (AU) Organs, 42 represented National Human Rights Institutions (NHRIs), 14 represented International and Inter-Governmental Organizations, 316 represented African and International Non-Governmental Organisations (NGOs), as well as other observers. Malawi was represented by three Commissioners and two members from the NGOs and Media respectively.

### **3.3 Education, Information and Training**

#### **3.3.1 Review of the Police Training Manual**

In the preceding year of 2012, the Commission embarked on the process of the review of the Malawi Police Service (MPS) Human Rights Training Manual jointly with the MPS, with funding from EU-DGP and Irish Aid. In 2013, the Commission however undertook a number of sessions on review of the Police Human Rights Training Manual. The sessions were aimed at aligning the Malawi Police Service Human Rights Training Manual to the emerging developments in the law, in light of the newly enacted amended Police Act (Cap13:01 of the Laws of Malawi), and emerging human rights standards, principles and best practice. This process will be carried over to, and finalised in, 2014.

#### **3.3.2 Judicial Colloquium and Lawyers Seminar on Sentencing Guidelines in Capital Offences**

The Commission in collaboration with the Death Penalty Project (DPP) and the Malawi Judiciary organized a judicial colloquium on sentencing guidelines in capital offences from 29th to 31st January 2013, at Sunbird Nkopola Lodge, in Mangochi, Malawi. This was preceded by a Lawyers' Seminar which was held on 28th January, 2013.

The Colloquium and Seminar were organized to achieve the following objectives: to provide a platform for sharing developments and trends relating to sentencing in capital offences in Malawi and comparable jurisdictions; to provide a forum for Judges to reflect on the jurisprudential developments in sentencing procedures/approaches post the Kafantayeni judgment in Malawi; to provide a forum for engagement on regional and international perspectives on the death penalty, in particular the sentencing approaches in capital offences; to discuss the trends and practice in other jurisdictions for dealing with sentencing in capital

offences. The colloquium was attended by a total of 22 Judges drawn from the High Court and Supreme Court of Malawi. A total of 56 lawyers from the Malawi Law Society, the Ministry of Justice and Constitutional Affairs, Private Law Firms, and, the Faculty of Law of the University of Malawi, attended the lawyers Seminar.



*Judges of the Supreme Court and High Court of Malawi attending a Judicial Colloquium on Sentencing Guidelines in Capital Offences organised by MHRC*

### *3.3.3 Human Rights Training for Head Court Marshals and Prison Staff*

The Commission facilitated a human rights training for Head Court Marshals and Prison staff, organised by the Judiciary with funding from European Union under Democratic Governance Program. The training workshop took place at Kalikuti Hotel in Lilongwe from 4th to 7th March, 2013. The main objective of the training was to improve access to justice by equipping these Head Court Marshals and Prison staff with knowledge and relevant skills on human rights.

## **3.4 Submission on Bills, Laws and Policies**

### *3.4.1 Submission on the on the Public officers (Declaration of Assets, Liabilities ad Business Interests) Bill, 2013*

The Commission made a written and verbal submission to Parliament, through the Public Appointments Committee on the Public officers (Declaration of Assets, Liabilities ad Business Interests) Bill, 2013. The Commission made the submission pursuant to its mandate of the promotion and protection of human rights in Malawi as provided for in section 129 of the Constitution and in line with section 13 and 14 of the Human Rights Commission Act, which gives the Commission the function and responsibility of, “studying the status and effect of legislation, bills, judicial decisions and administrative provisions for the protection and promotion of human rights and to prepare reports on such matters and submit the reports, with such recommendations or observations as the Commission considers appropriate, to the authorities concerned or to any other appropriate authorities.” In the Submission, the Commission highlighted that the issue of declaration of assets, liabilities and business interests, is a human rights issue given the intrinsic linkage between issues of accountability, transparency, and financial probity of public officers

and corruption. Further that curbing corruption particularly with respect to public resources has significant positive implications for human rights as corruption is one of the major factors that affect people’s effective realization of human rights. The elimination of corruption is therefore essential for capacitating duty bearers, in particular the state to effectively fulfill its obligations with respect to human rights. On this premise the Commission recommended to Parliament through PAC to put in place a comprehensive law that sets up a credible asset disclosure mechanism, that clearly establishes as to: who should declare what to whom and how; provide for content verification and sanctions of intentional failure to declare; ensuring public access to declarations; and, ensuring adequate resourcing and capacitating of the asset declaration management process.

In particular, some of the key recommendations that the Commission made were that, the powers of appointment, removal from office and setting of the terms and conditions of service of the office of the Director of Declaration of Assets should not be vested in the Presidency but should be vested in Parliament’s Public Appointments Committee.

### *3.4.2 Submission of proposed amendments to the Human Rights Commission Act*

The Commission presented a submission to the Ministry of Justice and Constitutional Affairs on a set of proposed amendments to the Human Rights Commission Act aimed at strengthening the enabling legal framework for the Commission. Following the submission, the Commission engaged a number of stakeholders, including, the President, the Minister of Justice, the Attorney General and the Solicitor General on the proposed amendments. The proposed amendments propose the following key changes: that the Human Rights Commission Act should have a provision on immunity of Commissioners and Staff of the Commission; the Act should set out a clear and objective process for removal of Commissioners from office; the Act should extend the term of office of Commissioners from a 3 to a 5 year term of office; that the Law Commissioner and Ombudsman should not have voting powers and, the scheme of selection of Commissioners should be changed from the current provisions where selection is done by the Law Commissioner and Ombudsman and that this function should be vested in a distinct independent authority.

## Child Rights

### 4.0 Introduction

Malawi ratified the Convention on the rights of the Child (CRC) in 1991. This was after the United Nations had adopted the CRC in 1989. The spirit permeating through the CRC is in line with the principles provided in the charter of the United Nations, which recognizes human rights as inalienable for every individual. In 1991, Malawi also ratified the African Charter on the Rights and Welfare of the Child. Over the years, there has been significant progress in the promotion and protection of the rights of children. The efforts have been strengthened by the Constitution of the Republic of Malawi which has included the rights of children in the Bill of Rights, and entrenched all the underlying principles of child rights.

The enactment of the Child Care, Protection and Justice Act in 2010, and other relevant pieces of legislation marked a positive step towards domesticating the CRC and other relevant international instruments. However, despite the legal reforms aimed at promoting and protecting the rights of children, there have been challenges towards the realization of such rights. As such, successes have been weighed down by the challenges. It is on this premise that Malawi needs to galvanise its efforts through the State and Non State Actors in order to ensure that children are given proper care and that various pieces of legislation that have been put in place are enforced in the best interest of children. It is in line with this background that the Commission implemented a number of activities in 2013 aimed at promoting and protecting the rights of children as discussed in this chapter.

### 4.1 Complaints Handling

In the exercise of its mandate as provided in the Constitution and the Human Rights Commission Act to investigate human rights violations and provide appropriate redress, the Commission registered 61 cases of child rights violations. The cases were handled through investigations, mediation and others were referred to other appropriate institutions for redress. Appropriate recommendations on specific cases were made to relevant authorities for redress. The following are the highlights of cases of child rights violations handled by the Commission.

#### 4.1.1 HRC/05/05/412 Ms X vs. Lilongwe Police Station

On 23 January, 2013, the Commission received a complaint from Ms. X on behalf of her 9 year old daughter, against the Lilongwe Police Station. The complainant claimed that her daughter was repeatedly defiled by Mr. Y between August and September 2012, at area 36 in Lilongwe. It was reported that when the matter was reported to Area 36 Police Unit in Lilongwe in December, 2012, Mr. Y was arrested and handed over to the Lilongwe Police Station for prosecution. However, it was alleged that the Police continuously failed to conclude the matter in court for unexplained reasons, thereby denying the complainant's right to access justice and effective remedy. The Commission investigated the matter and engaged Lilongwe Police Station to expedite the process of prosecuting the suspect in the interest of justice. Mr. Y was subsequently convicted and sentenced to 10 years imprisonment on 18th March, 2013.

#### 4.1.2 HRC/05/05/321 Child X vs. Mr. Y

The Commission received a referred complaint from Plan Malawi, Kasungu office, on behalf of a child X from Kasungu district. It was alleged that a rich businessman Mr. Y of Chisinga Village, STA Chisinga, in Kasungu, employed a nine year old boy for cattle herding. As a result, the child was reported to have dropped out of school, putting his right to education at risk. The Commission investigated the matter and established that the allegations were true. The Commission in collaboration with Kasungu District Labour Office intervened by withdrawing the child from the employment and he was re-enrolled in school. Through the intervention, the respondent paid all the outstanding wages for the child in line with the Employment Act (2000).

#### 4.1.3 HRC/05/05/435 Mr. A (for Child X) v Mr. B

The complainant, Mr. A, reported that her 16 year old daughter was abducted by Mr. B in Lilongwe. Consequently, the child went missing from the complainant's home for several days. The complainant alleged that he was later informed that the child was with Mr. B within Lilongwe. The complainant further stated that he managed to trace the child and Mr. B. However, the two escaped and when the matter was reported to Mtandire Police Unit, it was alleged that no proper action was taken.

The Commission investigated the matter and established that the child's missing was directly linked to Mr. B. Following the investigations, Mtandire Police teamed up with Lingadzi Police and moved in to trace Mr. B and the child. The Police arrested Mr. B and prosecuted him. Mr. B was convicted and sentenced to 2 and half years imprisonment for child abduction.

#### 4.1.4 HRC/05/01/957 Mr. A v Mr. B and Lingadzi Police

On 18th July, 2013, the complainant, Mr. A, claimed that his 6 year old daughter was defiled by Mr. B. It was further alleged that the incident happened on 5th June, 2013, when the complainant was away from home. The complainant further claimed that when the matter was reported to Lingadzi Police on the same day, Mr. B was arrested. However, it was alleged that the case stalled for unexplained reasons and the complainant sought the Commission's intervention in order for the matter to be expedited by the Police and the court. The Commission intervened in the matter and Lingadzi Police expedited the case. Mr. B was finally convicted and sentenced to 4 years imprisonment in October, 2013.

#### 4.1.5 HRC/05/01/991 Ms. X v Mr. Y

Ms. X complained that she has a 5 year old child with Police officer Y. Following Mr. Y's continued failure to provide maintenance for the child, Ms. X applied for a maintenance order at the Karonga Magistrate Court and it was granted. The court ordered that Mr. Y should be paying K7000 every month to Ms. X for the maintenance of the child from May, 2011. However, Mr. Y paid in the months of May and June 2011, only and no substantive grounds were given to the court for failure to comply with the court order. This resulted in the continued violation of the child's right to maintenance.

The Commission obtained an attachment order for the Malawi Police Service to be deducting the revised amount of K10,000 from the monthly salary of Mr. Y and remit the same to the bank account of Ms. X for the maintenance of the child. At the time of compiling the report, the Commission had served the attachment order to the Malawi Police Service for compliance.

#### 4.1.6 HRC/05/48/45: Ms A (for child X) v Mr. and Mrs. Y

The complainant, Ms. A, claimed that Mr. and Mrs. Y were denying their 10-year-old grand-daughter access to medical treatment on grounds of religious beliefs. At the time, the child was critically ill. The complainant stated that on several occasions, she reasoned with Mr. and Mrs. Y in order to take the child to the hospital for medical treatment. However, it was alleged that the respondents refused to take the complainant's advice because of their beliefs which bar its followers from accessing medical health services. The complainant sought the intervention of the Commission in order to safeguard the child's right to health. The Commission intervened and the child was finally taken to Kamuzu Central Hospital for medical attention where she died a few weeks later.

The Commission has been receiving such cases bordering on violation of child's rights to health in situations where the child's parents or guardians subscribe to religious groupings whose beliefs bar followers from accessing medical treatment. In such cases, the Commission has always intervened by way of investigations in order to protect the rights of the children concerned. The Commission sensitises and advises concerned parents and guardians on the human rights violations and the implications that come with parents' or guardians' failure to have their children access medical treatment when it is necessary to do so. Further, the Commission has been engaging such religious groupings in order to bring the required awareness on the need to respect the children's right to health by allowing them to access medical treatment. Currently, the Commission is working on a comprehensive legal opinion on how best to deal with such cases in order to protect children's right to health.



*MHRC Members' of Staff Children participated in the Commemoration of the International Human Rights Day on 10th December, 2013. The MHRC Child Rights Directorate fights for the promotion and protection of the rights of children such as these.*

## 4.2 Education, Information and Training Activities

The Human Rights Commission Act (Cap 3:08 of the Laws of Malawi), mandates the Commission to raise awareness on human rights and their corresponding responsibilities as well as to act as a source of information for human rights for the people of Malawi. The Commission is also mandated to raise awareness on the role of duty bearers and how the citizenry can demand the services from them. In view of this, the Commission implemented a significant number of activities aimed at promoting human rights through awareness raising activities, with a specific focus on the rights of children.

### 4.2.1 Training of Duty Bearers and Stakeholders in Child Rights

The Commission conducted a number of training workshops for duty bearers and other stakeholders concerned with the promotion and protection of the rights of children. The primary aim of the training workshops was to build the capacity of such duty bearers and stakeholders in order for them to meaningfully work towards the promotion and protection of the rights of children. The expectation was that such an approach would galvanise collective efforts in promoting and protecting the rights of children. The training workshops included the following:

#### (a) Training of Head Teachers on Human Rights and Democracy

With funding from the United Nations Development Programme (UNDP), the Commission in conjunction with the Malawi Institute of Education (MIE), continued to implement a programme of training primary school head teachers on human rights and democracy at MIE. In 2013, 95 head teachers were trained. The aim of the training was to equip the head teachers with knowledge, skills and values with respect to human rights and democracy as well as pedagogical skills that can support the teaching and learning of Social and Environmental Science in Malawi's primary schools. The expected outcomes were that the training would help the head teachers in the following aspects:

- i. develop a better understanding of the fundamental principles and values of democracy and human rights in Malawi;
- ii. gain an understanding of critical and contemporary issues such as gender, HIV and AIDS, drug and substance abuse, peaceful conflict resolution, environment and sustainable development;
- iii. develop an awareness of the current issues and controversies relating to human rights and democracy in Malawi;
- iv. use appropriate learner-centred methods of teaching such as case studies, problem-solving, group discussions in order to promote attitudinal change among learners;
- v. develop positive values such as justice, tolerance, democratic behaviour and equality in schools; and,
- vi. develop effective and appropriate teaching skills in citizenship education such as critical thinking, decision making and participation.

At the end of the training programme, the head teachers drew up action plans for implementation in their respective schools to ensure that the initiative improves human rights situation in the schools. In line with the training workshops, the Commission also conducted a monitoring exercise to ensure that the expected outcomes of the training programme were achieved. The monitoring focused on ascertaining the level, quality and standard of implementation of human rights activities in schools and the challenges. So far, a total of 675 head teachers, drawn from all education districts, have been trained in 12 cohorts since the trainings started in 2010.



*The MHRC Director of Child Rights Mrs. Noris Chirwa with Primary Education Advisors and Head Teachers at the Malawi Institute of Education*

#### (b) Training of Lay Magistrates and Police Prosecutors

A total of 20 lay magistrates and 14 police prosecutors from the northern and eastern regions were trained on child justice core competencies with a focus on the Child Care, Protection and Justice Act, 2010. It was expected that the duty bearers would gain knowledge and skills on how to promote and protect the rights of children according to law, more particularly with respect to handling of cases involving and affecting children. This initiative was undertaken in collaboration with the National Child Justice Forum.

#### (c) Training of Trainers in Child Protection

The Commission, with funding from Plan Malawi, conducted a workshop on Trainer of Trainers (TOT) on Child Protection. The Commission in collaboration with Plan Malawi developed a TOT child protection manual under the project of "Strengthening Child Protection Systems in Malawi." The manual contains updated information on child protection to reflect progressive changes that have come about due to the enactment of the Child Care, Protection and Justice Act, 2010; amendment of the Penal Code,

and other pieces of legislation that have a bearing on child protection. In using this manual, the Commission conducted a TOT for 50 partners of Plan Malawi and MHRC on child protection and how to make use of the manual. The expectation was that the skills and knowledge gained by the partners would help them to train other stakeholders who work towards promoting and protecting the rights of children.

#### **(d) Training of Police Child Protection Officers on Child Protection**

The Commission conducted a 3 days training on child protection for Police Child Protection Officers from the Northern region drawn from especially rural areas and those working in Community Victim Support Units. A total of 30 officers from Karonga, Chitipa, Rumphi, Mzuzu, Mzimba and Nkhata-Bay were trained in Child Justice Core Competencies. The training aimed at:

- enhancing skills and knowledge in application of Human Rights Based Approaches to child protection;
- equipping participants with core competencies needed to implement provisions of the Child Care, Protection and Justice Act, 2010; and,
- sharing experiences and challenges that child practitioners are facing in protecting child rights and how the new Act will overcome such challenges;

The meeting established that there is a big knowledge gap for police child protection officers especially those from the rural areas characterized among other things by lack knowledge on the application of the Child Care, Protection and Justice Act, 2010, which has relevant provisions on addressing child abuses. Participants to the training drew up work plans that would help the Commission continue following up on how the knowledge and skills obtained are being implemented

#### **(e) Training of Area Civic Education Coordinators on Human Rights and HIV and AIDS**

The Commission continued to implement a project titled “Review and Dissemination of the existing Laws, By-laws and Policies that relate to HIV and AIDS” which started in 2011. The overall objective of the project is to contribute to improved awareness on the prevention of HIV and AIDS. In this regard, the project seeks to promote human rights based approach to HIV and AIDS response at district and community levels. In the reporting period, the Commission in conjunction with the National Initiative for Civic Education (NICE) conducted briefing sessions with 106 NICE Area Civic Education Coordinators (ACECs) from Central and Northern Regions. The sessions aimed at building their capacity on human rights and HIV and AIDS in order for them to be empowered to undertake community sensitization meetings in their respective areas. Within the same period, the Commission conducted a monitoring exercise of the NICE ACECs’ sensitization meetings in the central and northern regions in order to assess the implementation of their activities as per the agreed work plans with the Commission. Further to this, the Commission conducted two refresher courses for NICE ACECs in Blantyre and Liwonde targeting ACECs from the Southern Region and Eastern regions respectively. The refresher sessions were conducted after noting that previous meetings revealed a capacity gap on ACECs especially in linking up issues of Human Rights and HIV and AIDS. The sessions reached out 73 ACECs thereby making a total of 179 ACECs who in turn conducted a total of 646 community meetings across the country and reached a total of 47, 090 people.

#### **4.2.2 Child Rights in Schools**

In order to integrate and enhance human rights education in primary and secondary schools, the Commission took the initiative to implement human rights programmes in schools. The programme focused on fostering a culture of learners’ participation in school governance through Student Councils. In view of this development, the Commission trained 234 learners from Chitipi, Njewa, Chitedze, Mphanje, Sankhani, Lingadzi, Mbabzi, Tsapa, Pherani, Muzu and Airbase Primary Schools as well as Njewa and Chitedze Community Day Secondary Schools, in Lilongwe. The training focused on creating a better understanding of human rights and the responsibilities which learners have in relation to the right to education. Through this approach, the Students Councils gained knowledge and skills on how they could use the Councils as a platform to facilitate learners’ participation in school governance, particularly in decision making on matters that affect them. The expectation was this would help learners to identify challenges affecting their education and suggest solutions.

Ultimately, such an approach will help to develop the learners’ full potential and prepare them for active life as reliable citizens with respect for human rights. This programme was preceded by a similar programme in 2012 in which the Commission trained 84 teachers from the same schools whose aim was to raise their awareness on pupils’ right to participate in all matters affecting them and how the teachers could base their teaching and programmes on child rights.

Further, the Commission trained Child Rights Clubs of Chatuwa, Chankhandwe and Mitundu Primary Schools. The trainings aimed at consolidating the clubs’ knowledge on human rights in schools and the responsibilities of students as well as teachers. The trainings targeted 59 learners and 4 patrons. In 2013, the Commission noted that there have been strides towards the realization of child rights in schools, particularly on the aspect of their participation in matters that affect them. However, there is need for more effort in order to create child friendly schools that promote principles of democracy.

#### **4.2.3 Sensitization Meetings on the Promotion and Protection of Child Rights**

The Commission conducted a number of sensitization meetings on the rights of children. The primary aims of such meetings were to sensitize people on the rights of children and how to protect them as well as to raise awareness on the responsibilities that go with such rights. Further, such meetings provided an avenue for the Commission to establish the extent to which child protection interventions are implemented at community level in Malawi. The meetings were conducted by way of open discussions on child rights and child protection issues and this afforded the people opportunity to discuss issues of concern on this topic that are prevalent in their respective areas and how such issues are being handled and which areas need improvements to ensure that children get appropriate redress. The meetings also address the roles which various players at community level can play in ensuring the full protection of children. The sensitization meetings were conducted in Machinga, Ntchisi, Kasungu, Chitipa, Salima, Ntcheu, Mzimba, Mangochi and Karonga districts. The Commission conducted a total of 42 community sensitization meetings and reached out to a total of over 8, 000 people.

#### **4.2.4 Capacity Building of Community Groups**

The Commission has a strong relationship with various community groups which include Community Based Organisations (CBOs), that work towards the promotion and protection of the rights of children. The Commission conducted a number training of trainers sessions, aimed at: equipping community groups with relevant skills and knowledge in the promotion and protection of the rights of children; enlightening them on the provisions of the Constitution, the Child Care, Protection and Justice Act, 2010 and how these legal instruments can be enforced. The Commission targeted groups from Lilongwe, Ntchisi, Mchinji, Dowa, Kasungu, Chiradzulu, Mulanje, Blantyre and Thyolo Districts.

Through this initiative, the groups were also empowered to train other community groups and independently undertake community sensitisations in their areas. In this way, the community groups were capacitated to tackle various human rights issues that emerge in their respective communities. The Commission also monitored the groups in order to assess how they apply the skills and knowledge gained. This provided an avenue for the Commission to appreciate achievements and challenges of the follow up actions undertaken by the community groups. Therefore, the Commission was able to provide guidance in areas where the groups encountered certain challenges. The monitoring mechanism is crucial because it also helps the Commission to comprehensively appraise the CBOs and identify gaps for further trainings.

### **4.3 Human Rights Monitoring**

#### **4.3.1 Monitoring of Child Care Institutions**

In collaboration with the Ministry of Gender, Children and Social Welfare, as well as the Child Better Care Network, the Commission undertook monitoring visits to Child Care Institutions (CCIs) and targeted districts of all the administrative regions in Malawi. 34 institutions were assessed in the eastern region, 51 from the southern region, as well as 25 from the central region. In addition to this, 8 institutions which cater for children with special needs were assessed. The exercise also involved other institutions that deal with issues of children such as the Malawi Police Service.

The overall objective of the exercise was to assess the CCl's on their compliance with the legal framework and the guidelines on the establishment and operation of children's homes in Malawi. The following were the specific aims of the exercise:

- to assess the quality and standard of care in CCl's and whether such institutions are registered with Government and meet the standards to operate;
- to assess the existence of individual child care plans for all children as well as the existence and effectiveness of programmes on de-institutionalisation;
- to assess whether the CCl's have child friendly rules and regulations;
- to assess the existence of management committees that incorporate children and community members in the running of the CCl's; and,
- to recommend to CCl's and Government on areas that need improvement.

The assessment revealed that many CCl's are still not registered with Government although they are operating, receiving and keeping children. It was further established that the institutions lack child care plans, rules and regulations on behaviour, complaints handling systems and management committees. It was also noted that many CCl's need to improve on sanitation, food, clothing, shelter and the general welfare of children. Further, it was noted that the CCl's are not open about their financial status. Following the findings, relevant recommendations were made to each institution in order to improve the quality and standard of care being provided in line with the Child Care, Protection and Justice Act, 2010 and rules and regulations for establishing the CCl's. In view of this development, the Government closed 2 Diamond Opharnage in Zomba for failing to comply with the relevant legal provisions. The Commission will continue to periodically monitor the CCl's in order to improve the conditions in such facilities and ensure that they operate that they should be operating according to law.

Furthermore, the Commission disseminated its findings to the District Social Welfare Officers (DSWOs). The expectation was that the discussion of the findings with the DSWOs would help to improve Government's supervision in the CCl's. The dissemination meeting adopted a major resolution that the Ministry of Gender, Children and Social Welfare at district level should closely supervise the CCl's so that they operate according to law. Further, that the DSWOs would have to mainstream the aspect of supervising the CCl's in their operations and steadily follow up on the institutions with a focus on areas that need improvement. The dissemination meeting targeted a total of 40 participants across the country.

#### 4.4 Public Inquiry on Child Maintenance

As one way of addressing systemic and structural violations of human rights, the Commission conducted a public inquiry on child maintenance. The inquiry was conducted pursuant to section 129 of the Constitution and section 15 of the Human Rights Commission Act, which empowers the Commission to promote and protect human rights in Malawi; and to assess human rights situations falling within its competence.

The inquiry, which was attended by 52 people from various parts of Malawi, was facilitated by a five-member panel whose chairperson was Justice Esmie Chombo of the High Court of Malawi. The other members of the panel were: Chairperson of the Human Rights Commission, Ambassador Sophie Kalinde, Commissioner Rodgers Newa, Mr. Mcbain Mkandawire, Executive Director for Youth Net and Counseling and Senior Chief Kachindamoto of Dedza District Council.

The main objective of the public inquiry was to establish the extent to which children are enjoying their right to child maintenance in Malawi and the following were the specific objectives:

- to raise awareness and promote public debate on the rights of children as they relate to access to maintenance for their improved welfare;
- to establish causes that make parents or guardians not to demand child maintenance for their children from those who are responsible;
- to establish the causes of non-compliance and lack of enforcement of child maintenance orders issued by the courts;
- to provide a forum where duty bearers on issues of child maintenance could be held to account for their actions and omissions; and,
- to make appropriate recommendations to relevant duty bearers from community to national level on improving access to maintenance of children in Malawi.

The inquiry provided citizens a forum to engage with duty bearers through among other things, provision of testimonies on the challenges faced by parents, guardians and children in accessing child maintenance. The inquiry analysed the current legislation, policies and programmes that aim at improving the welfare of children in Malawi. The inquiry also provided a forum for the citizens to appreciate the role of various duty bearers such as the Police, District Social Welfare Offices, the Legal Aid Department, the Courts as well as the role of chiefs, Non-Governmental Organisations and the Commission in ensuring that children access maintenance.

Further, the inquiry brought to light how cultural attitudes and practices affect children's access to maintenance from biological fathers. The inquiry was preceded by interface meetings with the communities through Focus Group Discussions (FGDs) on why many parents or guardians fail to claim child maintenance for their children and how the justice system and other stakeholders assist parents or guardians to claim child maintenance. The FGDs were conducted in the communities of Ntchisi, Mzimba, Zomba, Mangochi, Lilongwe, Blantyre and Nsanje districts. The following were the key findings of the public inquiry:

- lack of enforcement of maintenance orders is prevalent in Malawi. The causes include lack of sufficient resources for the relevant institutions, particularly the courts, to enforce their decisions;
- shortage of staff in key institutions, including the courts, where there are very few Child Justice Courts and child rights devoted magistrates. The problem is also prevalent in the Department of Legal Aid where there are very few Advocates and a huge staff turnover among lawyers as well as at the Malawi Human Rights Commission where there are few practicing lawyers;
- lack of sufficient funding to governance institutions. While it is evident that the Malawi Government's budget is highly constrained, there is a very strong case that its budgetary allocations can be reprioritised when the budget of the governance sector is compared to allocations in other sectors of the economy. Insufficient funding to governance institutions and Departments makes it difficult for such institutions to effectively service Malawians on issues of accessing child maintenance;
- lack of physical presence of key institutions to many Malawians in various parts of the country. These include the Department of Legal Aid and the Malawi Human Rights Commission that only have offices in the cities of Malawi;
- there is a level of corruption in the justice system. Various officers in key institutions, such as Court Clerks and some Magistrates, take bribes that pervert the manner in which justice in child maintenance cases is done;
- lack of knowledge on child rights, particularly the Child Care, Protection and Justice Act, 2010 by key actors. These include Magistrates, many of whom are still applying the old law. The same is true of many Police officers as well as chiefs and other traditional leaders;
- the problem of the court user filing fees is another impediment for many people to access justice in the area of child maintenance. The judiciary does not draw any distinction between poor litigants and litigants with means. The result is that the system is inherently economically discriminatory and unfair against child maintenance applicants who are mostly not economically sound. This is a weakness on the part of Government to meet its obligation of ensuring economic accessibility of the right of child maintenance; and,
- some claimants fail to access justice at the Legal Aid Department because of their failure to contribute funds towards litigation of cases as demanded by the Department and that the demands are arbitrary in most cases. While cost-sharing demands made by the Department of Legal Aid to its clients are pragmatic on its part, this in a bigger scheme of things reveals a failure of justice and Government at the national level to ensure the effective enjoyment of the right of access to child maintenance both under the Constitution, the Child Care, Protection and Justice Act, 2010 and the international law.

Following the findings of the Public Inquiry, the Commission made the following key recommendations:

- the Government should allocate more resources to ensure that institutions such as the Legal Aid and the Malawi Human Rights Commission have more presence in the country;
- the Anti-Corruption Bureau should also focus its attention on investigating corrupt practices in the justice system such as the courts where many clerks and some magistrates are believed to be corrupt;
- the courts should be enforcing its decisions on matters of child maintenance orders in order for the defendants to comply with their decisions. The Commission further recommended that alternative ways of enforcing court orders, such as reliance on garnishee orders (attachments orders), in which the liable person's salary or bank account is attached by the court and the amount ordered is directly debited. This could go a long way in curbing non-compliance. This would also minimize the amount of resources ultimately required in following up on defaulters;
- government should take concrete steps to address the problem of shortage of staff in key institutions such as the Legal

- Aid Department which has been the hardest hit in terms of staff turnover, particularly lawyers;
- e. with respect to insufficient funding to governance institutions, Government should address the issue of glaring imbalances in funding levels among government institutions and their respective justifications. This takes cognizance of the fact that funding levels to governance institutions have been low despite that such institutions are key in ensuring that the values of justice, openness and accountability are upheld; and,
  - f. Judicial officers should be trained on the factors to take into account when determining the amount of maintenance for the children. This would help in dealing with complaints of insufficient maintenance ordered by the courts.

## 4.5 Commemoration of the Day of the African Child

The Commission participated in the commemoration of the Day of the African Child which falls on 16th June, every year. For 2013, the commemorations took place in Machinga district under the theme “Eliminating Harmful Social, Cultural and Economic Practices Affecting Children: Our collective Responsibility”.

The Day of the African Child provides an opportunity to review efforts in the promotion and protection of the rights of children on the African continent, to consolidate promising practices and efforts in dealing with obstacles that impinge on the realization of the rights of children. The Day also presents an opportunity for Government, national and international institutions, as well as the communities to renew their commitment towards improving the welfare of children. Prior to the actual commemoration, the Commission undertook sensitization meetings in the communities of Village Headmen Balala, Khuzumba and Mitawa in Machinga, with a focus on child protection issues in relation to the theme.

The objective of the commemoration of the Day of the African Child in 2013, was to reflect not only on cultural practices but also on social and economic practices that have put the Malawian child at risk of violation of his or her rights. This was in light of the fact that while the Constitution allows every person to participate in the cultural life of his or her choice, there are also a diverse variety of cultures, traditions and practices that have brought infringement on the enjoyment of human rights for children. The Commission, therefore, called on stakeholders and the communities to recognize the impact that harmful social, cultural and economic practices have on children and that the responsibility of eliminating such practices should be collective, with each stakeholder having its roles and responsibilities.

Further, the Commission called on Government to renew its commitment and fulfill its obligation to protect children from harm. The call was premised on the principle that Malawi ratified various international instruments that directly or indirectly address the issue of harmful cultural practices which include African Charter on Human and Peoples Rights, the African Charter on the Rights and Welfare of Child, the Convention on the Rights of the Child. The call took cognizance of the fact that under the guise of culture, children and young women are often victims of various forms of physical or psychological violence that infringe on their bodily or physical integrity and mental well-being. This is due to the perceived inferior status in society and the persistence of patriarchal attitudes.

Further, the Commission called on Government and development partners to work together in the adoption and implementation of national plans of action that protect, respect, promote and fulfill the rights of children. This includes implementing advocacy interventions involving policy makers, respected elders, traditional and opinion leaders as well as community workers. Among other harmful social, economic and cultural practices that were highlighted included child marriages which featured highly as well as child labour, child trafficking, initiation rites and sexual abuse.

## 4.6 Commemoration of the Universal Children’s Day

The Commission joined the world in commemorating Universal Children’s Day on 20th November, 2013. The day was commemorated under the theme “Stop Violence against Children”. This day was set aside by the United Nations in 1954 when the UN General Assembly adopted the declaration of the Rights of a child and on similar day in 1989 the UN General assembly adopted the Convention on the Rights of the Child. This day (20th November) presents an opportunity to refocus on the works of all actors committed to the rights of children in the world. It further provides a platform for consolidating efforts for addressing challenges that hinders the maximum realization of children rights. In addition Governments utilize the day in renewing their commitments towards improving the plight of marginalized particularly vulnerable children.

The Commission produced a radio programme that focused on efforts by various service providers and duty bearers towards ensuring that protection of children from violence, abuse and neglect. The programme highlighted the positives changes on child rights promotion and protection since Malawi signed CRC and enacted the Child Care Protection and Justice Act, 2010, and the challenges and gaps faced in the promotion and protection of child rights, as well as the roles and responsibilities of various stakeholders in promoting and protecting child rights. The programme focused on the functions played by the Human Rights Commission, Ministry of Gender, Children and Social Welfare, the Malawi Police Service, the Judiciary, NGOs such as Plan Malawi

## 4.7 Advocacy on Child Friendly Legislation

In line with its mandate to examine existing and proposed legislation, policies, bills, judicial and administrative decisions to ensure that they conform to fundamental principles of human rights, the Commission implemented a number of activities aimed at supporting some proposed bills.

### 4.7.1 Advocacy on the Enactment of Trafficking in Persons Bill

The Commission conducted several meetings in order to ensure that the enactment of the Trafficking In persons Bill (TIP Bill) which was presented to the Ministry of Home Affairs in 2011, is expedited. It is the expectation of the Commission that if the Bill is passed into law, there will be a comprehensive legal frame work to deal with all forms of trafficking whose victims are mainly children and women. In 2013, the Commission continued to lobby Government through the Ministry of Home Affairs and Public Security, relevant Parliamentary Committees such as, the Committee on Defence and Security and the Legal Affairs Committee on the enactment of the TIP Bill. The aim of the meetings was to sensitize the Committees on the Trafficking in Persons Bill and garner their support for its enactment. The Committees pledged to support the Bill once it is tabled in Parliament.

The Commission also supported meetings for Malawi Network against Human Trafficking, a grouping that is championing combating human trafficking especially for women and children. Through the support, the network developed a four year (2013-2016) Strategic Plan of Action in order to deal with human trafficking. The purpose of the Plan of Action is to assist Malawi Government to adopt legislative and other forms of mechanisms and enhance cooperation in the field of Criminal Justice in order to holistically combat trafficking in persons, especially women and children. The Plan of Action also provides a framework for network members to share expertise and best practices in order to provide guidance for further development towards effective prevention, prosecution and conviction of traffickers. The plan also provides a framework to network members on the support and protection of victims and witnesses of trafficking.

Further, the Commission engaged the media through interface meetings on the TIP Bill. The aim was to sensitise the media on the bill and encourage various media houses to raise awareness on its significance and push for its enactment. The meeting also appealed to the media to report on the plight of Malawians who become victims due to lack of a comprehensive law and the lenient punishment met out by the courts in such cases. The Commission targeted 38 media personnel.

The Commission also supported the meeting held on 18th June 2013 of the Taskforce on the lobbying for the enactment of the TIP Bill. The taskforce continued to engage relevant stakeholders especially the Ministry of Home Affairs to expedite the process of enacting the Bill into law. By end of 2013, the Bill had not been approved by Cabinet.



*A cross section of Members of Parliament who attended a Lobbying Seminar of the Draft Human Trafficking Bill organised by MHRC*

#### **4.7.2 Advocacy on the Adoption of Children Bill**

In addition, as part of advocacy, the Commission conducted a National Stakeholders Meeting on the Adoption of Children Bill. The meeting aimed at sensitizing stakeholders in child rights sector on the Bill with a view to collectively working towards lobbying for its enactment. The meeting gave the participants an insight into the current practice of adoption in Malawi, the Adoption Act that is in force now, the gaps in the current law and improvements that are being proposed by the Law Commission.

The Commission further engaged the Law Commission to speed up the finalizing of the review process in order for the Bill to be handed over to Ministry of Justice and Constitutional Affairs for facilitation of the process of tabling of the Bill in Parliament. The review process was necessitated to bring the Adoption of Children Act in conformity with the international standards as reflected in the Convention on the Rights of the Child and other relevant international instruments. The Law Commission demonstrated commitment to expedite the relevant processes under its competence in order for the Bill to be presented to Parliament. The Commission's resolve is to ensure that child friendly laws are put in place in order to safeguard the rights of children, thereby promoting their best interest.

### **4.8 Dissemination of the report on the study on violence against children living or working on the streets of Malawi**

The Commission in partnership from African Child Policy Forum (ACPF), conducted a national wide survey on situation of children living and working in the streets in 2012. The Study established that the majority of children sell items on the streets while some are engaged in casual labour and begging. The Study further established that while on the streets, the major problems faced by the children include subjection to physical violence, sexual violence, lack of access to food and stigma, among others. It was established that most forms of violence to such children go unreported. The Study further were found out that institutions that are mandated to provide care and support for children such as the Police and the District Social Welfare Offices were not being adequately utilized by the children to report their cases. It was established that one of the reasons was the children's fear that they would be arrested since the law forbids them (children) to live or work on the streets. It was also established that the most important 'push and pull' factors that were making children live or work on the streets included the need for the children to provide support to their families.

In March 2013, the Commission disseminated the findings of the report to a group of stakeholders at a dissemination meeting organized by Every Child. Every Child was also disseminating its report on situation analysis for children living on the streets of Lilongwe. The 2 reports are instrumental as Malawi is in the process of developing a National Strategy on Children Living and Working in the Streets which the Ministry of Gender Children and Social Welfare has spearheaded. The goal of the Strategy is to safeguard the rights of and deliver quality services to children living and working in the streets. Over the past few years, Malawi has experienced an increase in the number of children living and/or working in/on the streets especially in the major cities of Lilongwe, Zomba, Blantyre and Mzuzu

### **4.9 Support for the meeting of the Child Case Review Board**

The Commission supported the very first meeting of the Child Case Review Board (CCRB) that was held from 12th to 13th December 2014 with support from UNICEF. The CCRB is established by the Child Care, Protection and Justice Act, 2010 under Sections 150 to 156. Among others, the CCRB is mandated to monitor Child Care Institutions to ensure that they comply with the law, to review cases of child offenders and matters of children kept for purposes of care and protection as well as to facilitate designing and implementation of rehabilitation programmes and curriculum for the proper re-integration of children into society. Taking cognizance of the significant role the CCRB is mandated to play in the protection of children, the Commission supported a meeting for the grouping to strategize on its operations and plans. The meeting was crucial in order for the CCRB to start exercising its mandate. The CCRB deliberated on a number of issues regarding status of Child Care Institutions and how to protect children living in such institutions and other centres and places of safety.

## Disability and Elderly Rights

### 5.0 Introduction

Disability and ageing are part of the human condition. Persons with disabilities and the elderly are human beings and as such they have rights too. Article 1 of the Universal Declaration of Human Rights (UDHR), states that, “All human beings are born free and equal in dignity and rights”. Underlying this foundational provision is the fact fundamental freedoms and human rights apply to everyone regardless of sex, nationality or ethnicity origin, colour, religion, language, or any other status such as disability or old age.

Section 20(1) of the Constitution of the Republic of Malawi prohibits any form of discrimination based on any grounds including disability or other status or condition. According to the Constitution, all persons are guaranteed equal and effective protection against discrimination on several grounds including on disability and old age. In particular, section 20(2) of the Constitution provides that legislation may be passed prohibiting discriminatory practices and the propagation of such practices and may render such practices criminally punishable by the courts. Article 1 of the UN Convention on the Rights of Persons with Disabilities defines persons with disabilities to include “those who have long-term physical, mental, intellectual or sensory impairments with which interaction with various barriers may hinder their full and effective participation in society on an equal basis with others (WHO, 2006). The International Plan of Action on Ageing adopted by the 1982 World Assembly on Ageing defines the elderly as persons that are 60 years and above.

Malawi is party to various regional and international human rights instruments aimed at promoting and protecting the rights of persons with disabilities and the elderly. Such instruments include the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (1994); World Programme of Action on Disabled Persons (1982); United Nations Convention on the Rights of Persons with Disabilities (CRPD 2006); African Charter on the Rights and Welfare of the Child; Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa; United Nations Principles for Older Persons (1991); the 2002 African Union Framework and Plan of Action on Ageing and the Madrid International Plan of Action on Ageing (2002). In signing and ratifying these human rights instruments the Malawi Government has, over the years, taken some positive steps in the promotion and protection of human rights status of persons with disabilities and the elderly at the normative level. However, there are still serious impediments to the implementation of the measures stipulated in these instruments.

Malawi faces serious challenges in ensuring the well-being of the elderly and the protection of their rights, as epitomized by the scanty feature of elderly issues in the implementation of many development policies and programmes. Therefore, Malawi’s 2013 ranking of 86 out of the 91 countries assessed on the Global Age Watch Index is quite illustrative of the mammoth task the country has in elevating the welfare and human rights status of the elderly. The aim of the Global Age Watch Index is both to capture the multidimensional of the quality of life and wellbeing of older people, and to provide a means by which to measure performance and promote improvements.

Against the above background, and in line with the mandate of the Commission, in 2013, the Directorate of Disability and Elderly Rights carried out various activities aimed at the promotion and protection of persons with disabilities and the elderly. The activities were in the areas of redress of human rights violations, disability and elderly rights monitoring and research, advocacy, lobbying, awareness campaigns as well as disability and elderly rights education and training.

### 5.1 Complaints Handling

In 2013, the Commission registered an increased number of complaints on violations of the human rights of persons with disabilities and the elderly compared to in 2012. In 2013, 22 complaints on disability and elderly rights violations were received and registered – 11 complaints on disability rights violations and 11 cases on violation of elderly rights were registered, against a tally of 14 cases received in 2012. This translates into an increase of 57% in the complaints registered under the disability and elderly rights thematic category.

The increased number of the registered cases is attributed to various factors, including: the enhanced engagement and collaboration of the Commission with stakeholders in the disability and elderly rights sector such as DPOs and CBOs; the community disability and elderly rights sensitization campaigns the Commission conducted and the call for submissions of testimonies of violations of disability rights that the Commission made in the media for the Public Inquiry on the Status of the Human Rights of Persons with Disabilities in Malawi; and the holding of the actual public inquiry. These fora provided the complainants with an increased opportunity to lodge complaints with the Commission.

These complaints were handled through the Commission’s laid down complaints’ handling mechanisms of investigation; provision of legal advice; referral to other institutions with requisite jurisdiction on particular cases; litigation and alternative dispute resolution methods such as hearing, mediation and conciliation.

The following sections provide a highlight of the cases of violation of the rights of persons with disabilities and the elderly which the Commission, through the Directorate of Disability and Elderly Rights Directorate, handled in the year.

#### 5.1.1 Mr. X vs. Mvera Girls Private Secondary School

On 19th March, 2013, the Commission received a complaint from Mr. X who was employed by the Education Secretariat of the Nkhoma Synod of the Church of Central Africa Presbyterian (CCAP) stationed at Mvera Girls Private Secondary School as a Biology and Agriculture teacher. He was employed in 2006 and started work on 19th March, 2006. He alleged that one day in 2006, while on duty conducting a Biology Practical lesson in a Biology laboratory a container flask containing chemical fluids accidentally fell and broke on the floor and the fluids poured into his eyes while he was squatting. Delays by school management and authorities at the Education Secretariat to provide proper treatment to the complainant resulted in his loss of eye sight, hence acquiring a visual impairment.

The complainant alleged that in 2007 the school management terminated his services without compensating him for the injury; he then went back to stay in his home village at Jenda in Mzimba District from where he was following up his claim for compensation with the respondent. However, the respondent was very elusive and never assisted him to get his compensation until the school employed a new management team; whereby the records of his case reportedly got lost or destroyed. To this end, he approached a Parliamentary Committee on disability affairs which referred him to the Ministry of Disability and Elderly Affairs and the Ministry referred him to the Legal Aid Department in Lilongwe where he was advised that his case would be settled outside the court. According to the complainant, the Legal Aid Department never received any response from the Respondent’s former employers on his claim.

The Commission investigated the matter and found out that the complainant acquired a visual impairment in the course of duty while working for the respondent and that negligence on the part of the respondent contributed to this. Investigations also established that the school management unprocedurally terminated the services of the complainant without the knowledge of his employer – Nkhoma Synod Education Department. Investigations also confirmed that he was not provided with adequate support and that he was not compensated for the injury as per the laws of Malawi. General poor records keeping on human resource inventory at the school led to the disappearance of the complainant’s personal information, including medical evidence, on his case. It was also established that the complainant got back to work on 13th February, 2013, not as a continuing employee but in a fresh appointment. The findings of the Commission, therefore, revealed grave violations of human rights in contravention to the Constitution of the Republic of Malawi, the Disability Act 2012 and the CRPD. The Commission thus recommended to the Education Secretariat of the Nkhoma Synod to ensure that the complainant is compensated and that his reinstatement should be corrected forthwith. In this regard the Commission, at the time of writing this report, was still monitoring the implementation of the recommendations it made to the Synod’s Education Secretariat.

#### 5.1.2 Mrs. Y vs. Kasungu District Health Office and Ministry of Health

On 7th June, 2013, Ms. Y of Lojwa in Kasungu district lodged a complaint with the Commission. Ms. Y got employed by the Ministry of Health in 2007, as a Health Surveillance Assistant (HSA) and was posted to Lojwa Health Centre under Kasungu District Health Office (DHO). She started work in the same year at Lojwa Health Centre. Since she has a visual impairment she was told by the District Environmental Health Office (DEHO) that she would be provided with Braille materials to enable her ably and properly carry out tasks in line with her job. She further alleged that, however, this did not happen as expected and this com-

pelled her to use her won financial resources to procure Braille materials such as Perkins Braille machine and Braille papers from Montfort Special Needs College in Chiradzulu district.

The complainant further alleged that she had made several efforts to engage the hospital management on her predicament but these efforts did not bear any fruit. She further reported that since 2007 until 2013 she had been using personal financial resources to buy the Braille materials and by June 2013 she had so far used MK365, 220.00, and that this was on record with the office of the DEHO at the hospital. She also complained that in a bid to recover the money the hospital owed her she had been engaging the Hospital Administrator on several occasions only to be promised that she would be refunded the money without any concrete action. This forced her to stop using her personal money to buy the working materials. She further alleged that the problem of lack of reasonable accommodation for her as an employee with a disability is compounded by the fact since she got employed in 2007 she had not benefitted from staff trainings, workshops and seminars; this is unlike her fellow HSAs in the district who had benefitted from various workshops and seminars. She therefore strongly felt that the practice and treatment accorded to her by the health authorities amounted to discrimination against her on the basis of her disability.

The Commission instituted investigations into the matter and found out that the allegations were true in that Kasungu DHO had not provided the complainant with appropriate devices for her work and that the hospital authorities had not done much in providing reasonable accommodation to the complainant as an employee with a visual impairment. It was further established that poor record keeping at the hospital had made it difficult to refund the complainant the money she used to buy the working materials with personal financial resources. Investigations also established that negligence on the part of the hospital authorities resulted in the hospital's failure to make the complainant's working environment accessible and inclusive six (6) years after her appointment as HSA. This was in contravention to the rights of persons with disabilities as provided for in section 12(1)(b) of the Disability Act 2012 and article 27 of the CRPD. The Commission therefore recommended to Kasungu DHO to provide an accessible and inclusive working environment to the complainant by providing her with appropriate working devices and providing necessary basic training for persons with visual impairments. The Commission was still monitoring the implementation of the recommendations at the time of reporting.

### 5.1.3 *Mayi B vs. Village Headman D*

On 7th December, 2011, the Commission received a complaint from Mayi B, an elderly woman in her 70's, of Kango Village, T/A Chiseka, Mitundu, Lilongwe. She had been living in the village since time immemorial. She stated that, in September, 2010, the respondent made allegations to the effect that she and her daughter practiced witchcraft. She denied the witchcraft allegations but the respondent insisted and mobilized his subjects to attack the complainant at her house. Sensing danger, the complainant fled to Mozambique to seek refuge at her other daughter's home. In December, 2010, her daughter from Mitundu went to Mozambique to plead with her to return to her homeland, Malawi, and she accepted.

The complainant stated further that, by the time she returned to Kango Village, her house had been destroyed under the respondent's instructions. In addition, the respondent had sold all of the complainant's 5 gardens. The complainant then decided to stay at her daughter's home whilst seeking intervention from the chiefs around the area. She first took her complaint to Group Village Headman Ntonda for redress but she did not receive assistance. She later took the matter to Senior Group Village Headman Nsabwe who referred the matter to T/A Chiseka where it was established that the respondent's witchcraft allegations levelled against the complainant were unfounded and that his actions towards her were unjustified. Thus, the respondent was found to be in the wrong for destroying the complainant's house and selling her 5 gardens. T/A Chiseka, therefore, ruled that the respondent repair the complainant's house, the complainant repossess her 5 gardens and the respondent should give the complainant 15 bags of maize since the ruling came at the middle of that year's growing season.

The complainant added that, at the time of lodging the complaint, the respondent was yet to honour T/A Chiseka's ruling as her house remained unrepaired and she was yet to repossess her five gardens. The complainant had, meanwhile, been making reminders to T/A Chiseka so that the respondent honours the ruling. She was still staying at her daughter's home at the time of lodging the complaint. The complainant, thus, sought the intervention of the Commission in the matter.

The Commission investigated the case and the following were the findings:

- a) The complainant, Mayi B, was harassed, threatened with death and evicted from the village – where she had lived since birth on baseless witchcraft allegations. The respondent led his subjects in the unlawful act and he regrettably confessed doing so.

- b) The complainant fled to Mozambique before her married daughter pleaded with her to return home and stay with her. It had been two years since her eviction from Kango Village.
- c) In her ordeal, the complainant's house was destroyed by the respondent and her five gardens were sold. The house was indeed destroyed and it was not habitable.
- d) After the complainant returned from Mozambique, she sought justice from Group Village Headmen Ntonda and Nsabwe but the respondent could not respect the summons of the two group village heads who are also T/A Chiseka's advisors. Later, the matter was taken to T/A Chiseka.
- e) T/A Chiseka erroneously and illegally presided over the witchcraft case at his court. This matter did not fall within his jurisdiction. He, however, ruled in favour of the complainant and, in his verdict, directed the respondent to give back the five dispossessed gardens to her, to repair her house and to give her 15 bags of maize as it was in the middle of the growing season. The respondent was also fined two live goats which he paid immediately after the ruling.
- f) The respondent was yet to honour T/A Chiseka's ruling as he had not yet given the complainant the 15 bags of maize neither had he repaired her house to make it habitable again. In addition, the complainant was yet to have her dispossessed gardens back.
- g) The respondent had shown open defiance to T/A Chiseka's ruling as several reminders had been sent to him to give 15 bags of maize to the complainant and repair her house so that she would relocate to Kango Village.
- h) T/A Chiseka and his senior chiefs were failing to enforce the ruling made against the respondent. T/A Chiseka had not made any communication to the complainant on the status of ownership of the five gardens.
- i) The respondent admitted not to have complied with T/A Chiseka's ruling but assured the Commission to give the complainant the 15 bags of maize after the harvesting period in June and to repair her house with assistance from her relatives.
- j) The complainant was still staying with her daughter, Mrs. Adilaida Chagwira, in Group Village Headman Chambadzana, T/A Chadza. She had been with the Chagwira family for 2 years since her return from Mozambique in 2012.
- k) The villagers who were influential in Mayi Sikitina's harassment and eviction from Kango Village assured the Commission that they would guarantee her security and welcome her if she would return to the village. This was reached during the discussion the Commission had with the villagers.

After a thorough examination of the findings, the Commission made the following recommendations:

- a) T/A Chiseka should enforce his ruling so that the respondent should give the complainant the 15 bags of maize and repair her house so that she relocates to Kango Village as a matter of urgency. The Commission should remind T/A Chiseka to be bold with his authority on the matter.
- b) T/A Chiseka should also make certain and ensure the complainant's repossession of the 5 gardens that were dispossessed from her by the respondent.
- c) T/A Chiseka should ensure that the complainant returns and relocates to Kango Village. The respondent should guarantee the complainant security and T/A Chiseka should monitor the turn of events once the complainant returns to the village.
- d) T/A Chiseka should be advised and warned of the legal implications against presiding over witchcraft cases. The Commission should, therefore, civic educate T/A Chiseka and his senior chiefs on witchcraft and the law in relation to human rights in Malawi.
- e) The Commission should monitor the progress of the implementation of its recommendations with the complainant's daughter and T/A Chiseka's counsellors, Senior Group Village Headmen Matewere and Nsabwe.
- f) Depending on the progress and outcome of the implementation of the Commission's recommendations, the Commission should seek the intervention of the Malawi Police Services (MPS), so that the respondent and his accomplices face the arm of the law on the matter.

## 5.2 Disability and Elderly Rights Education, Information and Training Activities

### 5.2.1 *Training of Disability Desk Officers from Government Ministries, Departments and other Public Institutions*

On the 11th and 12th March, 2013, the Commission conducted a training workshop for disability focal persons from Government ministries, departments and parastatals following the establishment of disability desk offices in these institutions. The establishment of these disability desk offices followed a directive from the Office of the President and Cabinet (OPC).

The main aim of the training was to equip the newly appointed officers with knowledge and skills on disability rights so that they meaningfully integrate disability issues in the national development agenda. 24 disability desk officers were trained. The training covered areas such as: disability mainstreaming; disability, human rights and development; disability and language; and, an orientation to the national and international human rights instruments on disability rights such as the CRPD, the Disability Act 2012 and the National Policy on the Equalisation of Opportunities for Persons with Disabilities.

Specifically, the training aimed at the achieving the following:

- provide the disability desk officers with an orientation on human rights in general and disability rights issues in particular;
- equipping the desk officers with knowledge on international and national human instruments on the rights of persons with disabilities;
- providing awareness to the desk officers on the rights of persons with disabilities and the importance of including disability issues in national development;
- promoting debate on the rights of persons with disabilities in national development; and,
- enhancing the capacity of policy makers in understanding the relationship between disability, human rights and development

### 5.2.2 Best Practices sharing and refresher training for Disability Desk Officers

The Commission, through the Disability and Elderly Rights Directorate, held a best practices sharing and refresher training workshop for disability focal persons on 26th September, 2013. The workshop targeted disability desk officers who had previously undergone training by the Commission and a few newly appointed ones. The workshop aimed at sharing experiences and best practices in mainstreaming disability rights. An assessment of this workshop on knowledge on human rights revealed that the Disability Desk officers' knowledge on human rights in general and disability rights in particular had improved, compared to the knowledge capacity during the initial training. It was also established that a few disability desk officers had already started implementing best practices on disability mainstreaming in their respective organisations.

### 5.2.3 Awareness Campaigns on Disability and Elderly Rights

In discharging its duty and function of acting as a source of human rights information for the government and the people of Malawi, in line with section 13(1) (a) of the Human Rights Commission Act, the Commission carried out awareness campaigns on disability and elderly rights in Kasungu, Mchinji and Lilongwe districts. During the campaigns Community Based Organisations (CBOs) were sensitized on the rights of persons with disabilities and the elderly. During the campaigns in the three (3) districts the Directorate of Disability and Elderly Rights established working relationships with six (6) CBOs.

### 5.2.4 Dissemination of Chichewa Version Booklets of the Convention on the Rights of Persons with Disabilities

The Commission distributed 2000 booklets of the Chichewa version of the Convention on the Rights of Persons with Disabilities (CRPD), to various stakeholders at various disability rights forums such as at the training workshops.

## 5.3 Public Inquiry on the Status of the Human Rights of Persons with Disabilities in Malawi

The Commission held a public inquiry on the status of the rights of persons with disabilities. The public inquiry was carried out against the background of rampant systemic violations of the rights of persons with disabilities. The inquiry commenced with the call for submissions from the public and private institutions, parastatals, Non-Government Organisations (NGOs) and other interested groups and individuals on a number of human rights thematic areas relating to disability issues. Pre-inquiry consultations with some selected stakeholders that deal with disability rights in Malawi were also conducted. The process culminated into a public hearing which took place at Crossroads Hotel on 19th March, 2013. This main aim of the public inquiry was to establish the extent to which persons with disabilities enjoy their rights and to find out the key challenges they face in their efforts to fully claim their entitlements in various spheres of Malawian social life.

Specifically, the inquiry set out to achieve the following objectives:

- raising awareness and promoting public debate about the rights of persons with disabilities in order to ensure greater respect, promotion and protection of these rights;
- raising awareness among persons with disabilities about their rights and providing them with the opportunity and forum to express their opinions, views and describe their human rights experiences;
- assessing the nature and magnitude of the challenges facing persons with disabilities so that appropriate remedial measures are recommended, advocated and lobbied;
- examining and evaluating laws, policies and practices which affect persons with disabilities and to make recommendations for improvement and review or reform of laws or administrative processes where appropriate; and
- ensuring better respect, protection, promotion and fulfilment of rights of persons with disabilities including their economic, social and cultural rights.

The inquiry targeted a cross section of rights holders (persons with disabilities) and duty bearers such as service providers, policy makers, public institutions, Civil Society Organisations (CSOs) and religious leaders. The findings and evidence that emerged from the major findings of the inquiry revolved around the main themes of: disability and health; nutrition and HIV and AIDS; disability and education; disability, poverty and agriculture with respect to social benefits; disability, employment and access to infrastructure; disability and access to justice; and, disability and street begging.

Based on the findings of the inquiry, the Commission made a number of recommendations to various stakeholders, authorities and duty bearers. The report of the public inquiry was disseminated at a dissemination workshop that was held in Salima on 23rd September, 2013, where different stakeholders were invited and attended. The Commission holds the view that the implementation of the recommendations contained in the report is not only imperative, but also requires concerted efforts from all stakeholders in general and Government in particular for the genuine, meaningful and successful promotion and protection of human rights of persons with disabilities in Malawi.

## 5.6 Situation Analysis on the Rights of the Elderly in Malawi

In its quest to fulfill its mandate on protecting and promotion of the rights of vulnerable segments of the Malawian society the Commission, through its directorate of disability and elderly rights, conducted a situation analysis on the rights of elderly persons in Malawi.

The principal objective of the study was to analyse the human rights situation of older persons in Malawi and make appropriate recommendations on how the challenges and obstacles faced by the elderly in the enjoyment of their rights and freedoms can be addressed. Specifically, the situation analysis aimed at achieving the following objectives:

- to provide concrete information on the type of data that has been generated by censuses, studies and surveys on the rights of the elderly in Malawi;
- to establish, examine and evaluate the existing legislative and policy framework for the promotion and protection of older people's rights in Malawi and make recommendations;
- to determine the availability of and level of access to existing services and social benefits for older persons in Malawi;
- to uncover the distinct needs and challenges faced by varied categories of older people in the enjoyment of basic human rights from their own perspective;
- to critically analyse the older people's rights duty bearers with respect to institutional framework and programme or intervention provisions;
- to increase awareness among policy makers and duty bearers on the human rights of older persons to ensure better respect, protection, promotion and fulfilment of the rights of the elderly in Malawi; and,
- to make appropriate recommendations to the Government of Malawi, development partners and appropriate duty bearers and stakeholders on priority intervention areas to improve the enjoyment of human rights and freedoms for older people.

The study was conducted in 6 districts in the country namely, Mzimba, Rumphu, Lilongwe, Ntchisi, Mwanza and Mangochi. The study involved determining the knowledge levels on the rights of the elderly on the part of the elderly themselves and duty bearers and stakeholders working in the sector of elderly welfare. The study further assessed the underlying situation of the rights of the elderly in Malawi with specific reference to critical areas such as, the extent to which older people benefit from social benefits programme such as Farm Input Subsidy Programme (FISP), Social Cash Transfer Programme and Public Works Programme

(PWP). The study also assessed the extent to which the elderly benefit from health care provision, education (adult literacy), access to justice and legal remedies, HIV and AIDS programmes, public security and access to other social services such as water and sanitation.

The findings of the situation analysis, inter alia, include the revelation that there is a dearth of knowledge on human rights among the elderly and the duty bearers, as well as personnel that work for the welfare and wellbeing of older people. It was also established that existing policies that are meant to address the human rights needs and welfare of older people in Malawi are not adequately addressing the needs of the elderly. The elderly are hardly benefitting from programmes such as FISP, PWP and Social Cash Transfer whose beneficiaries are often able-bodied individuals some of whom do not deserve to benefit from the initiatives. There is reported abuse and discrimination in the administration of the programmes and in most cases the older people raised the challenge of the absence of social protection programmes such as Social Cash Transfer in many districts in the country, hence suggesting the rolling out of the programme to all the districts in Malawi. The study further established that there is little appreciation of the rights of older people in most districts to the detriment of the welfare of the older men and women.

It was further unearthed that that lack of devolution of the functions of the Ministry of Disability and Elderly Affairs to the local level (districts) has had a significant negative effect on the delivery of services to the elderly in Malawi thereby compromising on the protection and promotion of their rights. The Ministry of Gender, Children and Social Welfare, through District Social Welfare Offices, have taken the role of addressing elderly issues yet this has critical budgetary implications which have tended to put elderly issues at the periphery. Another critical finding of the study is the lack of coordination among the players in the elderly sector. In addition, there are institutional challenges such as lack of funding and adequate personnel; this is hampering the elevation of the human rights and welfare of older people. The absence of a national policy for elderly persons, which is at the drafting stage, is a critical missing link to addressing the human rights issues of older people.

In light of the above findings, the Commission has made a number of recommendations to different stakeholders in order to mitigate the human rights plight of elderly people in Malawi.

## 5.7 Disability and Elderly Rights Advocacy

### 5.7.1 Review of disability and elderly rights related legislation, bills and policies

In 2013 the Commission contributed to the following in the area of disability and elderly rights related legislation, bills and policies:

- the review of the Malawi Council for Disability Affairs (MACODA) Bill;
- the development of a reader friendly Disability Act 2012 and validation of the reader friendly version of the Act;
- development of a National Disability Communications Strategy; and,
- the development of a roadmap for the implementation of the Disability Act 2012.

These activities were being spearheaded by the Ministry of Disability and Elderly Affairs and the Commission was engaged as a stakeholder in the disability sector.

### 5.7.2 Post-2015 Global Development Agenda, disability and the elderly

Against the backdrop that development issues of persons with disabilities and the elderly are missing in the current framework of the Millennium Development Goals (MDGs), the United Nations (UN) in 2013, made consultations with 50 countries in the world on the next global development agenda. Malawi was one of the 50 countries selected globally where the UN gathered information to inform post-2015 discussions of the “Future We Want” Campaign. The Post-2015 debate emphasises on inclusive, open and transparent development with multiple stakeholder participation including previously marginalised groups such as persons with disabilities and the elderly. The Commission, as a player in the disability sector, was part of the task force tasked to come up with a proposed post-2015 Development Agenda for Malawi with focus on disability as an integral development issue. In the country’s disability sector, the activity was championed by the Federation of Disability Organisations in Malawi (FEDOMA) with financial support from Sight Savers Malawi Country office.

Apart from the disability sector joint submission on the Post-2015 Development Agenda for Malawi, the Commission, as a National Human Rights Institutions (NHRI), made another submission to the UN following a call from the global body for Post-2015 submissions from NHRIs. The Commission made a submission on the Post-2015 Development Agenda with respect to persons with disabilities and the elderly along with submissions on other human rights thematic areas such as civil and political rights; economic, social and cultural rights; child rights and gender and women’s rights. This second submission on the Post-2015 Development Agenda was thus a special call from the UN to the Commission as an NHRI.

## 5.8 Building Networks and enhancing collaboration with other stakeholders in the disability and elderly rights sector

One of the four strategic outcomes of the Commission’s 2011-2015 Strategic Plan is to enhance cooperation with stakeholders in the promotion and protection of human rights as per the constitutional and statutory mandate of the Commission. To this end, the Disability and Elderly Rights Directorate carried out some activities to enhance the Commission’s collaboration and cooperation with other stakeholders working in the disability and elderly rights sector.

### 5.8.1 Courtesy call meeting with Hope for the Elderly

The Commission held a courtesy call meeting with the leadership of Hope for the Elderly, a Civil Society Organisation championing the promotion and protection of the rights of elderly persons in Malawi. The meeting centered on the need for the two organisations to work together in efforts aimed at promoting and protecting the rights of older men and women in Malawi, a somehow neglected but critical issue in the human rights discourse in the country. The two organisations thus agreed to work closely through the revamped Disability and Elderly Rights Thematic Committee hosted by the Commission. The Disability and Elderly Rights Thematic Committee comprises CSOs working in the disability and elderly rights sector and it provides a stakeholders’ forum for coordination and sharing knowledge, experiences and best practices in promoting and protecting the rights of persons with disabilities and the elderly.

### 5.8.2 Collaborative meeting with Sight Savers-Malawi

The Commission, through the Directorate of Disability and Elderly Rights held a meeting with Sight Savers International, one of the integral strategic partners in the promotion and protection of the rights of persons with disabilities in Malawi. This was against the backdrop that Sight Savers International noted that the Commission is strategically positioned to push and respond to the broader disability agenda. The two institutions agreed to start working together especially strategising on the development of the Post 2015 Development Agenda for persons with disabilities. This resolution was arrived at after noting that both the Commission and Sight Savers are already involved in activities that would ensure that the recently passed Disability Act is fully implements. The two institutions had planned to jointly support the activities of the Disabled People’s Organisations (DPOs) in Malawi.

### 5.9 Commemoration of the 2013 International Deaf Week

From 26th to 29th October, 2013, the Malawi National Association of the Deaf (MANAD), one of the affiliates of FEDOMA, joined the rest of the world in commemorating the International Deaf Week. The commemoration was held in Kasungu District under the theme “Equality for Deaf People”. The Commission, under the invitation of MANAD, took part in the commemoration which culminated in the holding of a panel discussion at the District Council’s Chamber. The Commission’s main contribution was during this panel discussion where it made a presentation on the rights of persons with disabilities in general and the rights of deaf people in particular.

During the discussions, which targeted the District Executive Committee (DEC) of both Kasungu Municipal and District Councils, the Commission centered on such areas as the understanding of disability as a human rights and development issue; the UNCRPD and the rights of persons with hearing impairments; basic factors for the implementation of the UNCRPD in relation to human rights of deaf people; protection of the rights of persons with hearing impairments under domestic and international legal and policy framework; and, the human rights situation of deaf people in Malawi. It was established during the discussions that there is a serious dearth of knowledge of disability as a human rights and development issue among implementers of development policies and programmes at the district level. This undesirable scenario has serious implications on disability mainstreaming at the district level.

In this regard, MANAD and the Commission agreed to take such discussions to DEC's of other districts in Malawi in light of the research fact that disability issues feature scantily in development policy formulation and implementation both at the local and national levels.

## 5.8 Disability Harmonization Workshop organized by FEDOMA

The Commission participated in a Disability Harmonisation Workshop that took place at Kalikuti Hotel in Lilongwe on 17th July, 2013. The workshop, organised by FEDOMA, aimed at harmonising the efforts, activities and programmes of various stakeholders in the promotion and protection of the rights of persons with disabilities in Malawi. In its presentation the Commission, through the Disability and Elderly Rights Directorate, informed the disability stakeholders of what it had carried out and what it does in line with its constitutional and statutory mandate in as far as the promotion and protection of the rights of persons with disabilities is concerned.

From the deliberations at the workshop the Commission noted that there are no clearly defined mechanisms of co-ordination among stakeholders in the implementation of activities that are meant to benefit persons with disabilities. This, reportedly affected the sharing of knowledge and best practices, thereby adversely affecting the championing of disability mainstreaming among players in the disability sector and beyond. Critically important, in addition, was the observation by the Commission that in most of the stakeholders' activities the Human Rights Based Approach (HRBA) to service delivery for persons with disabilities did not feature highly. This is in sharp contrast to the current understanding of disability as a human rights and development issue which is the underpinning principle in the UNCRPD and the Disability Act (No. 8 of 2012).



*Stakeholders attending a Public Inquiry on the Status of the human Rights of Persons with Disabilities in Malawi*

## Economic, Social and Cultural Rights

### 6.0 Introduction

Malawi ratified the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1993, marking government's commitment to the promotion, and protection of economic, social and cultural rights of the people in Malawi. The ICESCR promotes a number of economic, social and cultural rights such as, the right to food, housing, water, health, education and others. Article 2 of the ICESCR stipulates that each State Party to the Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures. The principle of progressive realization acknowledges the financial constraints State parties may face. However, it also imposes an immediate obligation for the State to take deliberate, concrete and targeted steps towards the full realization of the rights of the Covenant. The ICESCR thus calls for the Government of Malawi to develop and adopt policies and legislation aimed at not only mainstreaming of such rights but also their progressive realization. The Commission's Strategic Plan of 2011-2015 set up the Directorate of Economic, Social and Cultural Rights to steer all activities geared at promoting and protecting economic, social and cultural rights in Malawi, through human rights awareness campaigns, human rights monitoring and research, investigation of cases, advocacy and lobbying among others.

In 2013, the Commission undertook several activities in the area of economic, social and cultural rights, such as monitoring of places prone to human rights abuse, complaints' handling, human rights-based approach to HIV and AIDS programming advocacy, the integration of human rights-based approach on climate change mitigation and environment management workshop, among others. These activities are further described and discussed in the subsequent sub-headings.

### 6.1 Complaints Handling

The core mandate of the Commission is to protect human rights and to investigate violations of such. The Commission either receives complaints or on its own motion or volition, investigates allegations of violation of human rights. In the 2013, the Commission undertook investigations and alternative dispute resolution mechanisms on complaints alleging human rights violations in the area of economic, social and cultural rights. Below are some highlights of cases investigated under this category:

#### 6.1.1 Allegation of Prisoners dying of hunger at Maula Prison

The Commission learnt from a radio broadcast on Zodiak Broadcasting Station (ZBS) that 4 prisoners had died at Maula Prison in Lilongwe because of food shortage at the facility. The Commission immediately instituted some investigations to verify the allegations. The Commission's investigations into the matter established the following:

- There were no deaths of prisoners emanating from the alleged shortage of food at Maula Prison. The only reported death was that of a prisoner who was said to have been refusing to take medication, but was reportedly on Anti-Retroviral Therapy (ART) at least a week before the allegations of the death of prisoners due to hunger were made; The inmate who died was a 60 year old man, Mr. Buziel Kapalamula who died after a long illness on 14th December 2013;
- There was indeed a challenge food shortage at the facility due to low and sometimes no funding. However, the Commission registered that the prison has a few bags of beans although this too was running very low and that if it was not re-stocked within the week, the facility would completely run out of foodstuffs;
- Inmates and prison authorities informed the investigators that the facility had no food supplies (maize) for three days – thus Friday 21st, Saturday 22nd and Sunday 23rd December 2013. However, the Disciplinary Officer at the facility reportedly went around the facility advising all prisoners about the situation on the ground, assuring them that the situation was to be solved very soon. The facility's 2, 223 inmates confirmed to have indeed spent three days without food. On these three days,

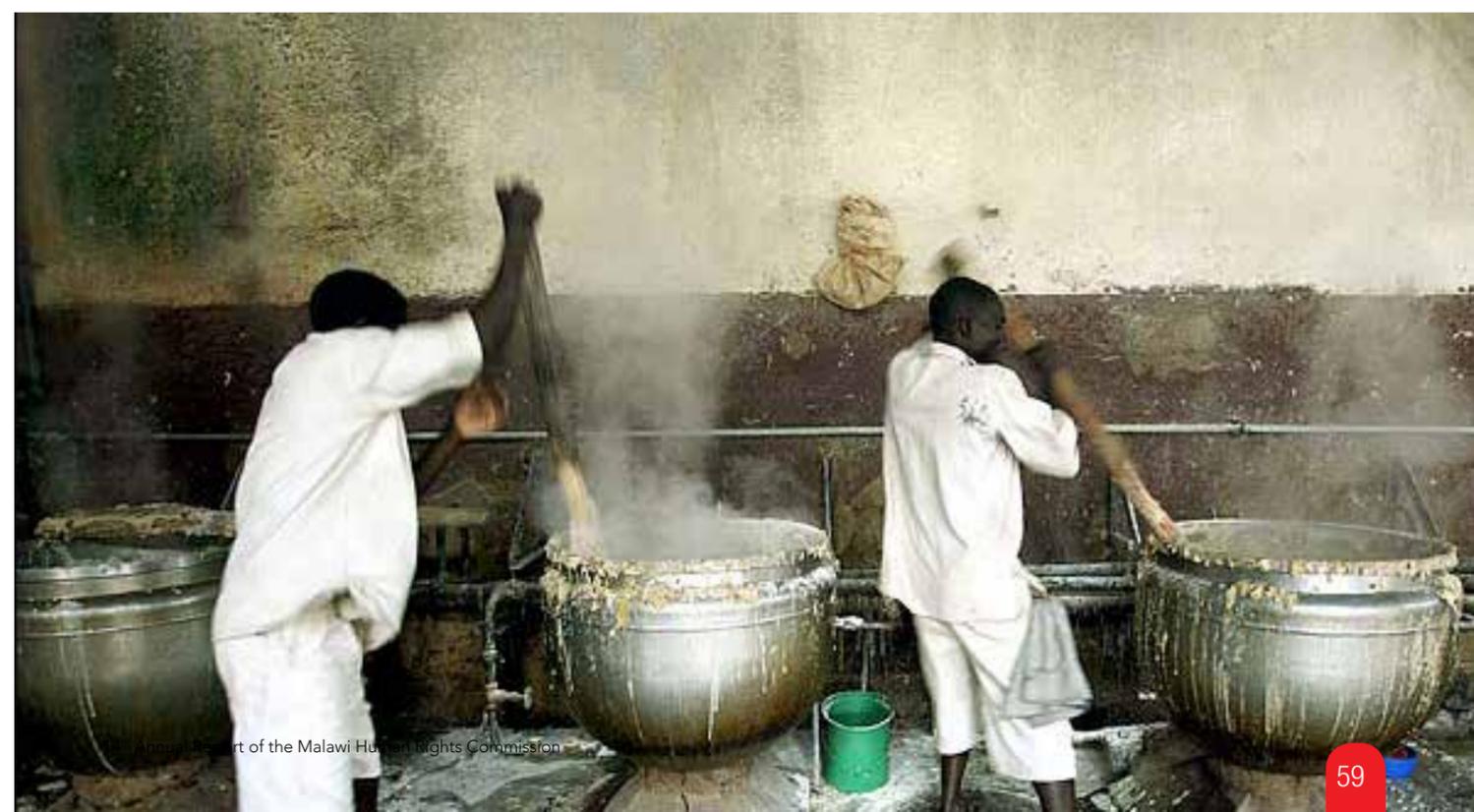
- they reported that they were actually surviving on food / meals brought to the facility by relatives or well-wishers such as the Catholic Women's Organisation of the Maula Deanery and the faithful from the Anglican community;
- Food supplies' shortages had reportedly also been exacerbated by lack of fuel for the Malawi Prison Service vehicles which are used to ferry firewood for cooking and food stuffs. This was highlighted to have been the result of the erratic funding to the Prison and particularly the fact that there was no funding for December 2013 to the facility;
- The food shortage was also attributed to delays in paying the suppliers of foodstuffs, particularly maize. As such, the suppliers are reportedly no longer willing to be supplying the facility without being paid.
- The prison authorities were reported to be engaged in negotiations with ADMARC to supply them with Maize.
- It was learnt that the African Bible College (ABC) Clinic had been ferrying and treating prisoners (sick inmates) for two days, because of lack of fuel at the facility.

The Commission therefore concluded that there was an urgent need to address these matters with speed and that funding to the facility should be consistent and adequate. The Commission believes that, by virtue of these findings, the Government is acting unconstitutionally and unlawfully in that the prisoners' non-derogable Constitutional rights not to be subjected to torture, cruel, inhuman and degrading treatment or punishment have been grossly violated. The mere fact that there has not been any death resulting from shortage of food in the prison is therefore not to be an excuse for being defensive on the issue.

Following the findings from the investigations that were conducted, the Commission made the following recommendations:

- the Government should immediately come to the rescue of the situation by timely and adequately funding the Prison Service Department. The situation on the ground should not be allowed to deteriorate to the point of letting well-wishers and relatives feeding the prisoners at the facility;
- the Commission should engage Government, through the Ministry of Home Affairs, to put in place a long term strategy that should safeguard the issue of basic service delivery to prisons, particularly in the areas of food, water, and health care. The provision of these aspects of prisoners' life cannot be relegated to well wishers or private entities by Government, because prisoners by reason of their confinement are entirely dependent on the Government for the provision of these basic necessities. They cannot walk out of the confinement to fend for themselves;
- the Commission should take up the issue of non-compliance of the judgment in Gable Masangano vs. Attorney General through both legal and non-legal interventions.

*Preparation of food in prisons. Food is prepared only once a day.*



The Commission received a complaint from Mr. W that people of Kwisimba and Ntuka villages are being told to move out of the area and occupy the area nearby which communities find not to be a good area as it is close to Lake Malombe. The villagers have been in the area since 1968. Conflicts arose between National Park officials and the villagers which made the VDC to ask for a wire fence to demarcate the boundary. In designing the boundary the villagers were not involved or consulted. The Villagers further complained about the destruction of their crops by elephants and that they were not being compensated for the damage. The Villagers sought intervention of the Commission to resolve the issue.

The Commission's investigations into this matter established the following:

- a) there were misunderstandings between the Liwonde National Park authorities and the Villagers on the park's boundary arising from the fact the villagers were alleged to have settled in the park's gazetted area;
- b) the villagers through the village headmen had been told to move away from the area as for a long time these villages had settled in the national park's territory;
- c) the villagers had been told to relocate to the nearby land to pave way for the demarcation of parks territory through erecting of a wire fence as villagers had been complaining about the destruction of their crops by elephants;
- d) there were efforts by government to erect a fence around all national park's gazetted areas with the purpose of ascertaining the park's boundary and averting the destruction of peoples' crops by wild animals from the national park, but the exercise was suspended due to concerns raised by the people in the area;

The Commission was advised that the national park authorities with the involvement of the Office of the President and Cabinet (OPC) would be engaging the communities and all the stake holders in trying to seek amicable settlement of the issue, and that the Commission should be following up with Liwonde National Park to find out progress made in the process of engaging the communities in resolving the issue raised in the complaint.

### 6.1.3 Mr. X et al vs. Chikole Health Centre

The Commission received a complaint from Mr. X alleging that electricity was installed at staff houses of Chikole Health Centre at Chowe leaving out the health facility itself. This situation led to patients being requested to bring candles during delivery because the maternity ward does not have electricity. The complaint also alleged that nurses come very late to assist mothers at labour wards. The community at Chowe sought the intervention of the Commission.

The Commission commissioned some investigations into the matter and established the following:

- a) electricity was installed at Chikole Health Centre some time back at both staff houses and the health centre but part of the health centre including the maternity wing had the electricity disconnected due to technical fault;
- b) health authorities at Mangochi District Hospital were already working to rectify the problem with the assistance of some co-operating partners.

The Commission would continue to follow up with Mangochi District Hospital on the progress of restoring electricity at the health centre.

### 6.1.4 In the matter of Paulo Sangwa vs. Bulugama Makunganya and others

The Commission took up the above matter on its own volition following media reports on the incident in Mangochi District alleging that a pork trader lost his business when an irate crowd confiscated and buried the pork he was selling case. The newspaper article in the Nation newspaper of 2nd December, 2013 indicated that the court records showed that Mr. Paulo Sangwa on 24th October, 2013 slaughtered a pig and went to sell it at Maldeco Market in the district. Mr. Sangwa was ordered to stop selling the meat (pork) by Bulugama Makunganya and his friends who told him that Muslims are not allowed to be exposed to pork as it is haram (forbidden) to their religion.

It was further alleged that Sangwa continued to sell the pork, and this annoyed the defendants who seized the meat and buried it. In his ruling, the First Grade Magistrate Jack Njikhoo indicated that Mr. Sangwa was wrong and was therefore found guilty as he continued to sell the pork despite being told that the area prohibits people from selling pork. He also said that the defendants were wrong for burying the pork as that was taking the law into their own hands. The newspaper articles further indicated

that the irate crowd who buried Sangwa's pork took a banner which read "Mangochi Clean-up Operation – Say No to Haram Foods in Mangochi Islamic State". There were also reports to the effect that those keeping pigs were given seven days ultimatum to get rid of their pigs.

The Commission instituted investigations into this matter whereby it verified the allegations by media reports to be true. The Commission found that the display of banner with the writings declaring Mangochi as an Islamic State was a clear indication of extremism and criminal in nature as it threatens state security. The Commission verified that the 7 day ultimatum was indeed given and letters of such were distributed to the residents of Busili area. It was observed that a group of Muslims was pressurizing the Chief of the area Busili to condemn the actions of those that were selling pig meat. The commission observed that the concerned people took the law into their own hands. The Commission learnt that the residents of Mangochi, with the intervention of several local stakeholders had already commenced processes to engage amongst themselves and resolve the matter amicably, notwithstanding the tension that was still in the area. The Commission advised the complainant Mr. Sangwa to file an appeal against the determination of the lower court and undertook to monitor the progress of the engagement of the residents on the matter.

### 6.1.5 Phalombe and Jali Road, Phalombe District Hospital and Nine Teacher Training Colleges

The Commission took up the above matter on its own volition following media reports on the status of the road in question, the hospital and Teacher Training Colleges (TTCs). The reports alleged that the Government of Malawi had been borrowing money since 2004 for the construction of these projects which had either stalled or were non-existent. The Commission took note that the communities of Phalombe District complained to the District Commissioner (DC), Mr. Charles Makanga over Government's failure to construct a district hospital which they were promised in 2005. The people of Phalombe were querying the inordinate and unexplained delay by Government to construct the hospital. The media reports further alleged that Parliament had however been approving the budget and authorized several loans for the said projects.

The Commission commenced preliminary investigations into the matter. The initial on-spot fact finding exercise established that the construction of the Phalombe District Hospital did not commence as schedule despite allocation of the funds to the project by Parliament. The exercise also confirmed that concerned residents from the area petitioned Phalombe District Council on why the project had not yet started despite Parliament allocating funds to the project. The exercise further found that the Phalombe – Jali road construction had stopped and no activity of construction was seen during the visit of the Commission on the site. The 9 TTCs had not yet been built during the Commission's investigations. At the time of writing this report the Commission was yet to get some response from Government on this issue.

## 6.2 Human Rights Monitoring

The monitoring of human rights situation in places prone to human rights abuse is one of the core functions of the Commission. In 2013, the Commission undertook a number of monitoring exercises as described below;

### 6.2.1 Monitoring of Extractive industries.

Malawi is recording a growing interest on the part of citizens and a number of stakeholders in the extractive industry. The discovery of precious minerals in the country has in recent years seen a number of foreign and multi-national companies coming in to invest in the extractive industry. So far, the ventures in the industry have been characterized by a serious lack of a robust regulatory framework as well as lacking transparency and accountability. This has led to a lot of unanswered questions remaining, on the part of the members of the affected communities and the citizens generally. This is particularly so in as far as the benefits to local citizens and the economy, among others, are concerned.

The extractives industry is both formal and informal, with the formal sector having attracted some international or foreign investors. The Commission remains concerned with the apparent lack of transparency and accountability in the various operations of the industry, for example in the awards of mining licenses and some of the procedures of the exploration and mining concessions, as well as in the accruing foregone revenues due to some tax incentives and any perceived potential benefits from the mining sector to all citizens of Malawi.

The Commission also noted that there have been numerous disagreements and growing levels of discontentment, between the communities and the companies. This has led to, in some instances, a series of peaceful demonstrations and industrial strikes. There have also been a number of cases where companies have been alleged to have unlawfully taken land from the communities, for purposes of opening up mines. A case in point is the limestone mining in Ntcheu District and gemstone mining in Mulanje District. There are also legitimate fears and concerns that the mining operations will ultimately result in the destruction of the environment and subsequently lead to gross human rights violations, among others through contamination of fresh waters through siltation, sanitation and destruction of ecosystems to the detriment of both current and future generations.

The Commission also took note of a number of media reports to the effect that most of these international and national companies do not actually give Malawians optimum benefits from these extraction activities. The companies are reported to having not even fulfilled their corporate social responsibility, as agreed when negotiating the mining concessions. In a related vein, the Commission noted with concern the growth of the informal extraction of minerals which is mostly unregulated, thereby creating a huge risk of environmental degradation.

To gain an in-depth understanding of the situation, the Commission undertook a Monitoring Exercise of the Human Rights Situation in the Extractive Industry in February and March 2013. The main aim of the exercise was to make an overall assessment of human rights situation in the extractive industry using the human rights lens.

Specifically, the exercise was undertaken to assess how the environment is being impacted as a result of the mining activities; to find out how the mining companies are managing waste disposals and pollution of ground water and air; to find out if the mining industries have robust complaint mechanisms for local communities and employees, to aid the remediation of any adverse human rights impacts they cause or to which they contribute; to list and describe all corporate social responsibilities being carried out by the mining companies, within their catchment area; to develop a working relationship with the identified mining industries, in an effort to inculcate a culture of respect for human rights in the mining sector; and to make appropriate recommendations to Government and relevant stakeholders on issues of human rights and mining.

The monitoring visits were done in all the three regions of Malawi as shown in the table below:

Name of the Mining Company	District of Location	Region
1 Kayelekera Uranium Mining	Karonga	Northern Region
2 Malawi Coal	Karonga	Northern Region
3 Mean Jalawe Coal Mine	Rumphi	Northern Region
4 Mchenga Coal Mine	Rumphi	Northern Region
5 Kanyika Niobium Mining	Mzimba	Northern Region
6 Shayona Cement Factory	Kasungu	Central Region
7 Nyala Mines	Ntcheu	Central Region
8 Balaka Lime works	Balaka	Southern Region
9 Cilcon and Fluoride Lime	Balaka	Southern Region
10 Balaka Cement Company	Balaka	Southern Region
11 Njuli Quarry Mines	Chiradzulu	Southern Region

In an effort to achieve the set objectives, three methods were used during data collection. These methods included; Oral interviews, Focus Group Discussions (FGD) and stakeholder analysis. In the oral interviews, a questionnaire was administered to employees and employers in the extractive industry visited. The FGDs were conducted to gather data from community members surrounding the industry, while in some cases, some key stakeholder informants were also interviewed. For example, in Karonga, the monitoring team interviewed the District Health Officer (DHO) and the Ministry of Water on issues related to respiratory diseases, radiation and water contamination respectively.

The monitoring exercise established the following:

a) Weaknesses in the Legal and Policy Framework

The findings of the exercise established that Malawi does not have a clear and internally standardized legal and institutional framework adequately regulating the mining industry. The existing law on Mines and Minerals Act (1981) is outdated, such that it is out of tune with new pieces of legislation that have a direct bearing on the mining sector, for instance, the Environmental Management Act (1996), which makes a transparent and accountable Environmental Impact Assessment (EIA) a mandatory requirement before any mining activity is commissioned.

Furthermore, the Act lacks a model mineral agreement, which implies that contracts are decided on a case-by-case basis, which undercuts the potential of developing a shared vision in the mining sector. The Act vests exclusive ownership of the mineral resources in the people of Malawi through the President and the Act does not outline how the mining ventures would address the needs of vulnerable segments of society as well as promoting value addition and community development.

The EIA of all development projects in Malawi is a legal requirement under section 24 of the Environment Management Act of 1996. To this effect, the monitoring exercise established that although regulations governing EIA have been in force in Malawi for over two decades now, the Kayelekera Uranium Mine Environmental Impact Assessment (KEIA) suggests that EIA implementation and enforcement in Malawi is inadequate. The environmental audits are not being carried out to ensure compliance with the recommendations that were made in the EIA report.

b) Actual or Potential Threats to Human Rights, including Environmental Degradation

Furthermore, the exercise established that the extraction of most mineral deposits, such as Coal at Mchenga Coal Mine in Rumphi and Uranium at Kayelekera in Karonga, involves Open Cast Mining (OCM). This OCM, involves digging of trenches and massive cutting down of trees, consequently leading to air and ground water pollution. This situation has created numerous problems, related to the right to health of local communities (including project staff). For instance, at Mchenga Coal Mine, it was reported that employees who work inside the mine defecate black stools when they answer the call of nature due to inhaling of coal dust.

Secondly, the monitoring team also gathered facts to the effect that in December, 2011 one of the mine workers (Alex Songa) was crushed to death at Mchenga coal mine by a rock which broke loose from the ceiling, pinning him down to the ground. Thirdly, the FGDs with community members at Jalawe Village in Rumphi also highlighted that dust emissions from coal and some waste disposals from coal has also created major environmental problems, for example, the lowering of local agricultural productivity and an increase in respiratory illnesses in the local population, especially coughing and sneezing. In addition to the loss of prime agricultural land, the Jalawe community also suffers the consequences of uncontrolled erosion due to the strip-mining process employed by Mchenga Coal Mine, with substantial deposition of waste coal disposals into Lake Malawi.

The exercise has also revealed that most of the more violent abuses of human rights flow directly or indirectly from protests over perceived injustices in relation to the acquisition of land for mining, and to the often inadequate forms and rates of compensation deemed appropriate by Government agencies. The failure to negotiate land access fairly and in a manner that encourages community participation in the design of the project effectively negates all future attempts at community relations or development. While relocation of resident communities is often necessary for a project to proceed, the manner in which it is negotiated and conducted is critical to future relationships between communities and mining projects. The recourse to violence, or the threat of force, is an obvious signal of failure in this respect where communities are not encouraged to participate in the planning and execution of relocation.

c) Recommendations of the Monitoring Exercise

In light of the above findings, the report recommended that there is a great need to fast-track the finalization of the review of the 1981 Mines and Minerals Act, which is outdated and not in sync with the recent mineral and gas discoveries being made in Malawi. The revision of the law should among other things address the complex and diverse nature of the extractive sector, including how companies can operate in environmental friendly ways; and how communities can participate and benefit from the industry. Additionally, it is also recommended that the Commission should promote and facilitate Human Rights Impact Assessments (HRIAs), as a component of Social Impact Assessments (SIAs), for all new mining exploration, expansion and development projects.

Further to that, Government should: put in place an overall strategy at an early stage, for how the nation could gain and grow from the industry; put in place a robust tax policy to secure the Government's share of revenues, and specialized regulatory Government institutions to facilitate and monitor this; ensure Government ownership in exploration and production of licenses operated by the international mining companies; ensure for a competitive process of bidding (international competition) for exploration and mining rights. Using several actors reduces the risk for corruption and illegal cooperation; emphasize transparency and accountability at all levels, from assigning mining rights to the companies' income and Government income, in order to avoid rent seeking and corruption; and put in place a clear strategy in advance for how to maximise the use of the extra revenues and a fiscal policy to ensure that the benefits from the income will last for generations to come.



**part of the heap of sand deposits at Njuli Quarry which blocked a nearby stream and gardens surrounding the quarry, a problem which was addressed with MHRC's intervention.**

### 6.2.2 Monitoring of Health Service Delivery in Public Hospitals and Health Centers.

In 2013 the health sector experienced a number of challenges in terms of service delivery to the general populace. To this end, the Daily Times newspaper of 29th January, 2013, carried an article alleging that there was a critical shortage of drugs and bed space at Kamuzu Central Hospital. The Commission investigated the matter by way of engaging the hospital staff at Kamuzu Central Hospital and the Bwaila Hospital.

The preliminary findings revealed that there was indeed an acute shortage of essential drugs and that the Pediatrics Unit of both hospitals were highly congested. The shortage of essential drugs was mainly attributed to the devaluation of the Kwacha, which affected the budget line for procurement of essential drugs. Based on the preliminary findings, the report recommended that a thorough investigation and monitoring exercise be carried out at a nationwide scale, to assess the situation in all Government-run hospitals and health centers and map a way forward with a multi-disciplinary holistic approach. It was against this background that the Commission conducted a nation-wide monitoring exercise of health service delivery and the impact on the enjoyment of the right to health.

The right to health is guaranteed under section 13 (c) of the Constitution of the Republic of Malawi 1994 (hereinafter referred to as the "Constitution") (as amended) stipulates that the State shall provide adequate health care, commensurate with the health needs of Malawian society and international standards of health care.

The ICESCR which is widely considered as the central instrument of protection for the right to health, recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health under article 12(1)". It is important to note that the Covenant gives both mental health, which has often been neglected, and physical health equal consideration. The Committee on Economic, Social and Cultural Rights has in its General Comment Number 14 extensively elaborated on what the right to health encompasses and States parties' obligations under article 12.

The Committee, in General Comment 14, furthermore, outlines essential and interrelated elements which States parties are to apply while fulfilling their obligations under article 12. These elements are: availability; accessibility; acceptability; and quality. The monitoring exercise was therefore designed to gauge these elements as major indicators of the right to the highest attainable standard of health. In reference to these essential elements, the overall objective of the monitoring exercise was to assess health service delivery and the impact on the enjoyment of the right to health. To achieve the overall and specific objectives set, the Commission visited nineteen (19) district hospitals and some health centers. The table below indicates the district hospitals where the monitoring exercise was conducted:-

Table showing Districts where the monitoring exercise was conducted

Northern Region	Central Region	Southern Region
1 Chitipa	Dedza	Blantyre
2 Karonga	Kasungu	Chikhwawa
3 Mzimba	Lilongwe	Chiradzulu
4 Nkhata-Bay	Mchinji	Machinga
5 Rumphu	Ntcheu	Mangochi
6	Salima	Mulanje
7		Thyolo
8		Zomba

In a nutshell, the Commission established that essential drugs were insufficiently available in most public hospitals in the year. It was also established that despite the fact that the Government had signed Service Level Agreements (SLA) with Christian Health Association of Malawi (CHAM) facilities people still travel distances of more than eight kilometers to access the nearest health facility. Additionally, in most of the health centers that were visited, the accessibility to the underlying determinants of health, such as safe and portable water and toilets were a challenge.

In light of these findings, the Commission made the following recommendations to government and other relevant stakeholders:-

- Government should scale up funding to the hospitals in order to improve health service delivery. This will ensure that drugs and other medical supplies are consistently available and that the hospitals run properly without compromising quality.
- Government should scale up the process of training and recruiting health workers, such as doctors, clinicians and nurses in order for the hospitals to provide quality health care services.
- Government should increase the bed-space in the public hospitals, in order to match the increasing number of the population. This comes against the background that all the hospitals have serious shortages of bed-space resulting in overcrowding, because the facilities were built when the population was relatively smaller.
- Government should install effective back-up equipment in all the health facilities, to ensure that there is a constant supply of water and electric power to avoid compromising health care delivery standards due to frequent water and electricity disruptions in the country.
- Government should ensure that Central Medical Stores Trust (CMST) is always stocked with adequate essential drugs and other medical supplies, so that the same are easily supplied to the health facilities at any given time.
- Government should construct additional health centers in rural areas, so that people do not walk long distances to the nearest health facilities.

- g. Government, through the Ministry of Health, should start providing explanatory literature in large print or Braille, to assist health care givers, workers and beneficiaries with visual impairments, or utmost, it must arrange for an interpreter for those with hearing impairments in different facilities.
- h. The Commission should consider conducting a similar monitoring exercise, targeting the users (i.e. the general public) of public health facilities. Such an exercise shall complement the findings of this exercise, whose target group was the suppliers (i.e. public health facilities and their personnel) of public health services. The consolidated findings shall therefore give a more holistic picture of the health service delivery situation in the Malawi's public health system.

### 6.2.3 Monitoring the availability of Maize in ADMARC Depots

The Commission noted that in the months of January and February, 2013, there was no consistent supply of Maize in ADMARC depots, as there was a growing number of people queuing and being sent away without buying the commodity in ADMARC Depots. The Commission also received a complaint from Mr. Samuel George on behalf of a concerned group of citizens who had converged at Lilongwe ADMARC Depot on 11th February, 2013, to buy maize but were sent back on the grounds that maize was not available at this depot.

The Commission instituted a monitoring exercise in some sampled ADMARC depots in the three regions. It was observed that indeed, in most of the depots, there was no maize and in the depots where maize was made available, would-be-buyers were allowed to buy 10 kilograms of maize per individual. In view of these findings, the Commission took the matter further by engaging the Chief Executive Officer (CEO) of ADMARC and the National Food Reserve Agency (NFRA).

The Commission wrote letters of enquiries to the 2 offices, requesting them to provide information regarding the seemingly 'growing' scarcity of Maize. The letters also asked whether or not ADMARC had adopted a policy for rationing of the commodity, and if so, the reasons behind such a policy. The response from the CEO of ADMARC indicated that in most of the times, during the months of January to March, most households experience shortages in their maize stocks resulting pressure on ADMARC depots.

On the issue of rationing of Maize, the CEO indicated that the Policy of ADMARC is to ration the quantity of maize to 20 – 24 kilograms, to enable at least everyone to have access to maize at an affordable price.

### 6.2.4 Monitoring of the South-Korea and Kuwait Labour Export Programme

The Commission monitored the developments relating to the South Korea Labour Export Programme following media coverage of the issue. The Commission noted the discrepancies that the media exposed with the respect to the programme that on the

#### *Long queues in ADMARC Depots during the lean period*



one hand alleged that the Government of Malawi had in fact not entered into any contract with their counterparts on this programme as had been previously reported. On the other hand, it was learnt that Government had allegedly been recruiting youth in Malawi to be sent to South Korea on the labour programme. The Commission contacted Government through the Ministry of Labour and Vocational Training, on a number of occasions to be furnished with information on the programme, including its objectives, proposed life span, financial and contractual arrangements, criteria for eligibility of persons to be recruited, progress in implementation and reciprocal arrangements that had been put in place on the part of the receiving country and most importantly, if assessments were carried out on the status of working conditions in the receiving countries. At the time of writing this report, Government had still not responded to the Commission's letter of inquiry.

Suffice to point out that in its January to May, 2013, Status of Human Rights Report which was submitted to the President, relevant Ministries and other stakeholders, the Commission recommended to Government to comprehensively address all areas relating to the programme that could render it potentially abusive of human rights. The Commission made this recommendation having taken note of reports from various comparable jurisdictions that have documented a number of human rights violations that occur through similar programmes, where migrant workers are often victims of violations of: freedom from forced labour; freedom from subjection to torture, cruel or degrading treatment or punishment; and discriminatory employment practices. The Commission specifically recommended to Government to put in place measures that would ensure that the human rights and welfare of the young men and women who would become migrant workers in the receiving countries were fully protected. Thus, Government was urged to carry out detailed assessments of the working conditions in the receiving countries, mechanisms for protection of migrant workers from abuse, and a proper system of monitoring and tracking of the workers, among other things.

## 6.3 Education, Information and Training activities

The Commission's Strategic Plan of 2011-2015 identifies increased knowledge of human rights and their corresponding responsibilities, as one of the strategic outcomes to be attained within the next five (5) years. In a bid to achieve this, the Commission organized a number of activities aimed at increasing human rights knowledge and their corresponding responsibilities among the staff members and the general public, as described below:

### 6.3.1 Training workshop on Business and Human Rights.

In April, 2013, the Commission organized an internal training workshop on Business and Human Rights. The overall objective of the training workshop was to equip participants with knowledge and skills on the UN Guiding Principles on business and human rights. In total, 31 members of staff were equipped with knowledge on business and human rights, with particular emphasis on the UN Guiding Principles on Business and Human rights.

The knowledge gained during the workshop assisted staff members from respective directorates to programme activities related to business and human rights, such as integration of human rights-based approach on climate change mitigation and environment management programming; and monitoring of extractive industries, among others.



**Members of Staff of MHRC attending an internal training**

### **6.3.2 Training workshop on the Integration of human rights based approach on climate change and environment management.**

The Commission with funding from the European Union (EU) - DGP organized a workshop on the integration of human rights based approach on climate change mitigation and environment management. The workshop took place at Wamkulu Palace in Lilongwe in September, 2013. The workshop drew participants from government departments and ministries, parastatals, media houses and civil society organizations. In total 41 participants attended the workshop.

The objective of the workshop was to hold discussions with stakeholders drawn from key Government Ministries and Departments and Civil Society Organizations on human rights-based approaches to climate change mitigation and environmental management programmes. The workshop also drew recommendations on stakeholders' roles and strategies on mainstreaming human rights-based approaches to climate change mitigation and environmental management programmes.

### **6.3.3 Training workshops on Human Rights Based Approach (HRBA) to HIV and AIDS Programming.**

The Commission with funding from the National Aids Commission (NAC) continued implementing a project on human rights-based approach to HIV and AIDS. The Commission conducted regional workshops in the Central and Southern parts of Malawi.

In the Southern Region, the workshop took place in Blantyre on 12th August, 2013, at Victoria Hotel. Participants for this workshop were drawn from Blantyre, Mwanza, Neno, Chiradzulu, Thyolo, Chikwawa, Mulanje, and Nsanje District Councils. Each District Council was represented by District Commissioner (DC), Director of Planning and Development (DPD), District Aids Coordinator (DAC) and District Social Welfare Officer (DSWO). In total there were 30 participants.

In the Central Region, the workshop took place in Salima on 10th September, 2013, at Mpatsa Lodge. Participants for the meeting were drawn from Lilongwe, Salima, Ntcheu, Dedza, Kasungu, Ntchisi, Dowa, Mchinji and Nkhotakota. Each District Council was represented by District Commissioner (DC), Director of Planning and Development (DPD), District Aids Coordinator (DAC) and District Social Welfare Officer (DSWO). In total there were 30 participants.

The workshops were mainly aimed at strengthening participants' understanding of HRBA to HIV and AIDS programming. The workshop achieved the following outcomes:

- Participants were enlightened on the linkage between Human Rights Based Approach and HIV and AIDS;
- Participants were equipped with knowledge and skills on how to integrate Human rights issues into policies on HIV and AIDS at the work place and communities at large; and
- Participants were also enlightened on the mandate, functions and composition of the Malawi Human Rights Commission.

### **6.3.4. Working Session on State Party Reporting**

The Commission in collaboration with the Ministry of Justice and Constitutional Affairs (MoJCA), with funding from European Union (EU) DGP, organized a working session on the preparation of human rights State Party and Shadow reports with a specific focus on the International Covenant on Economic Social and Cultural Rights (ICESCR). The working session drew participants from key government ministries and departments, Civil Society Organizations and Non Governmental Organizations. This working session aimed at achieving the following objectives:

- to establish the progress made, obstacles or problems encountered by the Country in the implementation of the UN reporting obligations in international human rights instruments;
- to monitor the situation on the ground with respect to State Party reporting;
- to show the progress made, obstacles or problems encountered by the Country in implementing the treaty obligations with a view to addressing systematically associated problems of implementation and compliance;
- to ensure formulation of laws and policies which may help the State Party improve its compliance with treaty obligations through appropriate adjustments in domestic legislation;
- to ensure public scrutiny and facilitate popular participation in government policies;
- to provide a basis on which progress in implementing treaties may be evaluated in future; and
- to facilitate information exchange at the national level with a view to learning from each other's experience.



**Picture showing Stakeholders who attended the working session on the compilation of a State party Report on the UN Covenant on Economic Social and Cultural Rights**

## Gender and Women's Rights

### 7.0 Introduction

Malawi ratified the Convention on Elimination of All forms of Discrimination against Women in 1987. Malawi has complemented the various instruments it has ratified with enactment of laws addressing gender and women's rights issues. These include the Constitution, the Prevention of Domestic Violence Act, the Deceased Estates (Wills, Inheritance and Protection) Act of 2011 and the Gender Equality Act. Under the Gender Equality Act the Commission has been given the powers to ensure the enforcement of the Act.

In 2013, the Commission undertook a number of activities in fulfillment of its statutory mandate and in accordance with its 2011-2015 Strategic Plan. This report highlights some of the major activities that were carried out.

### 7.1 Complaints Handling

In the exercise of its mandate as provided in the Constitution and the Human Rights Commission Act to investigate human rights violations and provide appropriate redress, the Commission registered cases of women rights violations. The cases were handled through investigations, mediation and others were referred to other appropriate institutions for redress. Appropriate recommendations on specific cases were also made to relevant authorities for redress.

### 7.2 Education, Information and Training Activities

The Commission implemented a significant number of activities aimed at promoting human rights through awareness, with a specific focus on the rights of women and gender equality.

#### 7.2.1 Sensitization Meetings on the Promotion and Protection of Women Rights

The Commission conducted a number of sensitization meetings on the rights of women. The primary aim of such meetings were to equip the people on the rights of women and how to protect them, as well as to raise awareness on the responsibilities that go with such rights. The meetings were conducted by way of open discussions and this also afforded the people an opportunity to discuss issues of human rights concern that are prevalent in their respective areas and how such issues can be dealt with. In these meetings, communities also gained knowledge on the Gender Equality Act, Prevention of Domestic Violence Act and the roles which various players at community level can play in ensuring that the intentions of the Acts are realized. In September 2013, four open air meetings were conducted as follows: Village Headman Likoloma, Village Headman Mbera, GVH Kagome, GVH Mbalame T/A Kaphuka in Dedza district. These open air were conducted on 12th and 13th September, 2013. During all these meetings over 800 women, girls, men, and boys were enlightened on the role and mandate of the Malawi Human Rights Commission as a constitutional body, promoting and protecting human rights.

#### 7.2.2 Presentation on the Enforcement of the Gender Equality Act to the Women's Parliamentary Caucus

The Commission, under sections 8 to 10 of the Gender Equality Act, has been given the mandate to ensure enforcement of the Act. In line with this mandate, the Commission made a presentation to the Women's Caucus of Parliament, who held a Gender Sensitive Budgeting workshop from 6th to 7th May, 2013 at the Sogeooca Golden Peacock Hotel in Lilongwe. The workshop was organized by UN Women in collaboration with Ministry of Gender and Community Services.

#### 7.2.3 Development of a Training Manual on Gender-based Violence

In 2013, the Commission started working on the production of a training manual on gender-based violence, focusing on sexual exploitation and abuse. The manual will form part of the training materials aimed at popularizing the Gender Equality Act.

### 7.3 Development of stakeholders' implementation and monitoring framework for the enforcement of the gender equality act (2013).

In line with the responsibilities vested on the Commission by the Gender Equality Act, the Commission, with funding from UNFPA, embarked on the process of developing an implementation and monitoring framework for gender and women's rights activities. The process involved a number of activities including:

- a) a workshop on the development of the Implementation and Monitoring Framework for the Gender Equality Act, which was held on 24th July, 2013, in Lilongwe;
- b) formation of a working group jointly led by MHRC and Ministry of Gender, Children and Social Welfare; and
- c) meetings of the working group – the working group held meetings leading to preparation of the draft implementation and monitoring framework. The directorate is finalising the framework based on the discussions and comments from the meetings.

### 7.4 Public Inquiry on Access to Justice in cases of Gender Based Violence

As one way of addressing systemic and structural violations of human rights, the Commission conducted a public inquiry on access to justice on cases of Gender Based Violence. The Commission co-ordinated the Public Inquiry on Gender Based Violence that was at Mzimba Boma at Chimkusa community ground on 22nd August, 2013. The objectives of the inquiry were to:

- a) examine the effectiveness of justice structures at a local level;
- b) gather information on national basis through hearings, submissions and testimonies, on accessibility of justice and remedies by victims of gender-based;
- c) establish the accessibility of justice structures at community level;
- d) establish the level of awareness of availability and utilization of justice structures in the communities;
- e) find out the responsiveness of justice structures to cases of gender based violence
- f) establish the effectiveness of stakeholders in the justice system;
- g) assess the reporting mechanisms available at community level on issues of gender based violence; and
- h) make recommendations to Government and relevant stakeholders on issues of access to justice and remedies on cases of gender based violence.

The inquiry was chaired by the Mzuzu High Court Judge, Justice Dingiswayo Madise and the panelists included the Commission's Chairperson, alongside Commissioner Kubalasa, and Nyadindi Kumwenda. During the inquiry, witnesses gave testimonies on their experiences of gender based violence such as wife battering; rape cases; wife abandonment; property grabbing and cases of defilement. Those who testified at the inquiry were drawn from Mzimba, Mzuzu and Nkhata Bay. Stakeholders such as the Police, the Magistrate Court, Health Officials, Education officials, NGOs and CBOs, social welfare made presentations on their roles with respect to gender-based violence and the challenges being met in assisting victims of gender based violence in Mzimba and other areas in the northern region.



**Members of the Panel on the Public Inquiry on Access to Justice in Cases of Gender-Based Violence, in the middle, Justice D. Madise, Chairperson, and Commissioner D. Kubalasa and Mrs. Lillian Dindi Kumwenda**

The inquiry provided citizens a forum to narrate their testimonies on the challenges faced by parents, guardians and children in accessing justice, when it comes to cases of Gender Based Violence. The inquiry also analyzed the current legislation, policies and programmes that aim at improving access to justice to GBV cases in Malawi. The inquiry provided a forum for the citizens to appreciate the role of various duty bearers such as the Police, District Social Welfare Offices, the Legal Aid Department, the Courts as well as the role of chiefs, Non-Governmental Organizations and the Commission in ensuring that the rights of women are protected, especially when it comes to accessing justice on Gender Based Violence cases. A verbatim report of the inquiry is available.



**ABOVE: A cross section of stakeholders who attended the Public Inquiry on Access to Justice in Cases of Gender-Based Violence**  
**RIGHT: MHRC Executive Secretary delivering closing remarks at the end of the Public Inquiry on Access to Justice in Cases of Gender-Based Violence**



## 7.5 Study on Gender and Human Rights

The Human Rights Commission Act empowers the Commission to conduct human rights related researches with a view to contribute to policy and programme formulation, among other functions. It is in line with the above mandate that the Commission, with funding from UNDP conducted a research on gender and human Rights in selected areas of the districts in Malawi. The Commission is engaged in the process of formulation of the National Action Plan for the Promotion and Protection of Human Rights (NAP), the first one having existed for the period 2005 to 2011. The Commission envisages that the follow-up NAP should be gender-responsive. The gender and human rights study was therefore conducted in order to inform the gender and women's rights perspective of the follow up NAP.

Data collection for the research was conducted in Chitipa, Karonga, Mzimba and Nkhata Bay in the North; Kasungu, Lilongwe, Salima and Ntcheu in the Central region. In the Southern region the study was conducted in Mangochi, Blantyre, Mulanje and Nsanje. At the time of writing this report, all the data had been collected and analysed. In 2014, the study report will be finalised and produced.

## 7.6 Establishment of the Gender and Women's Rights Thematic Committee.

In June, 2013, the Commission received funding from UN Women for the strengthening of the Gender and Women Rights thematic committee. The following are the activities that were done under this project:

- identification of thematic committee members – drawn from stakeholders dealing with gender and women rights;
- launch of the Gender and Women rights Thematic Committee in Lilongwe on 7th August, 2013, which included reviving of the committee and orientating the selected committee members;
- recruitment of a Desk Officer for the committee; and
- holding of meetings of the thematic committee members.



**Stakeholders who attended MHRC's meeting on the Gender and Women's Rights Thematic Committee**

## Corporate Services

### 8.0 Introduction

Corporate Services functions are integral to the operations of the Commission. These functions include those of human resources management, general administration – including project management, financial management and internal auditing services, and library and information management services. Through this Directorate the Commission performed a number of activities as follows:

#### 8.1 Commissioners Meetings

The Commissioners regularly meet as provided in the Human Rights Commission Act to consider the activity reports and provide direction to secretariat on implementation of activities on regular basis. The meetings accord a platform where collective resolutions are made on various issues of human rights in the country. In 2013, the Corporate Services organised 5 Regular Meetings of Commissioners and 3 Extra Ordinary Meetings of Commissioners. In addition, the Commissioners continuously held meetings with their respective directorates and committees of the Commission.

The Commissioners had an audience with the State President in keeping with the provisions of the Human Rights Commission Act which among other responsibilities obligates the Commissioners to keep the President fully informed of the activities of the Commission and to furnish the President with advice and recommendations on human rights issues. The meeting was held on 15th November, 2013, at the Kamuzu Palace in Lilongwe.

The Commissioners attended several local and international meetings on human rights some of which are detailed in the table below:

Dates	Meeting	Country	Commissioner (s)
12th – 16th March, 2013	22nd Session of the Human Rights Council	Geneva	• Ambassador Sophie Kalinde
6th – 13th May, 2013	26th Annual Meeting of the International Coordinating Committee of National Human Rights Institutions and the Common Wealth Forum of National Human Rights Institutions Meeting	Geneva	• Ambassador Sophie Kalinde
3rd – 6th July, 2013	Interface between Zimbabwe Human Rights Commission and Civil Society in promoting and protecting human rights and other fundamental freedoms of the people in Zimbabwe before, during and beyond 2013 harmonised elections	Zimbabwe	• Ambassador Sophie Kalinde
20th – 22nd October, 2013	Consultative Meeting on the Role of National Human Rights Institutions in enhancing a human rights culture in Africa	Gambia	• Commissioner Rev. Dr. Z. Kwalala
22nd – 29th October, 2013	54th Ordinary Session of the African Commission on Human and People's Rights	The Gambia	• Ambassador Sophie Kalinde and Mr. Dalitso Kubalasa
25th – 29th November, 2013	9th Biennial Conference of African National Human Rights Institutions	Ghana	• Ambassador Sophie Kalinde

Dates	Meeting	Country	Commissioner (s)
12th – 16th March, 2013	22nd Session of the Human Rights Council	Geneva	• Ambassador Sophie Kalinde
6th – 13th May, 2013	26th Annual Meeting of the International Coordinating Committee of National Human Rights Institutions and the Common Wealth Forum of National Human Rights Institutions Meeting	Geneva	• Ambassador Sophie Kalinde
3rd – 6th July, 2013	Interface between Zimbabwe Human Rights Commission and Civil Society in promoting and protecting human rights and other fundamental freedoms of the people in Zimbabwe before, during and beyond 2013 harmonised elections	Zimbabwe	• Ambassador Sophie Kalinde
20th – 22nd October, 2013	Consultative Meeting on the Role of National Human Rights Institutions in enhancing a human rights culture in Africa	Gambia	• Commissioner Rev. Dr. Z. Kwalala
March 2013	Meeting with the Chairperson of the South African Human Rights Commission and Chairperson of the International Coordinating Committee of National Human Rights Institutions	South Africa	• Ambassador Sophie Kalinde
May 2013	Meeting with the Chairperson of the Mozambique Human Rights Commission	Malawi	• Ambassador Sophie Kalinde



*Meeting of Chairperson of MHRC with Chairperson of the South African Human Rights Commission*

*Meeting of Chairperson of MHRC with Chairperson of the Mozambique Human Rights Commission*

## 8.2 The Commission's participation in the Human Rights Council and the International Coordinating Committee of National Human Rights Institutions Meetings

National Human Rights Institutions have an obligation to attend meetings of the International Coordinating Committee of National Human Rights Institutions at the Office of the High Commissioner for Human Rights headquarters in Geneva, Switzerland. Further, the Commission as a National Human Rights Institution (NHRI), has a right of attendance and participation in the Human Rights Council Sessions. The Commission's Chairperson and Executive Secretary attended the 22nd Session of the United Nations Human Rights Council. Such meetings discuss issues of human rights experienced in member states. The Commission, being one of the few NHRIs with an "A" status has talking rights in such meetings.

The Commission prepared and submitted written statements to the United Nations Human Rights Council on these areas: the High level Panel on the Vienna Declaration and Programme of Action; the High level Panel on Human Rights Mainstreaming; and, Report of the Independent Expert on the effects of foreign debt and other related international obligations of states on the full enjoyment of human rights. The Commission's submissions on these three areas were duly received and endorsed by the Human Rights Council.



*The Malawi Human Rights Commission Delegation to the 22nd Session of the Human Rights Council*

*MHRC Chairperson Ambassador Sophie Asimenye Kalinde, second from left participating in a Panel Discussion during the Biennial Conference of the International Coordinating Committee of National Human Rights Institutions*

## 8.3 Human Resources Management

### 8.3.1 Recruitment of Staff

The Commission, through the Upper Appointments and Disciplinary Committee, conducted interviews on 7th and 8th February 2013, and the following members of staff were recruited:-

NO	POST	NUMBER OF POSITIONS	DIRECTORATE	NAME OF THE
1.	Deputy Director of Civil and Political Rights H4	1	Civil and Political Rights	Mr. Tiwonge Kayira
2.	Principal Civil and Political Rights Officer H6	1	Civil and Political Rights	Mr. Mtendere Gondwe

The Commission, through Lower Appointments and Disciplinary Committee, recruited the following junior members of staff:-

NO	POST	NUMBER OF POSITIONS	DIRECTORATE	NAME OF THE
1.	Reporter	1	Corporate Service	Mr. Mathews Malunga
2.	IT Assistant	1	Corporate Service	Mrs. Sabina Mmanga
3.	Stores Clerk	1	Corporate Service	Ms. Mwaiwao Kanike
4.	Messenger	1	Corporate Service	Ms. Prisca Kaumphawi

### 8.3.2 Promotions of Staff

The Commission, through relevant Appointments and Disciplinary Committees, promoted the following members of staff

NO	POST	NUMBER	DIRECTORATE	NAME OF THE
1.	Ms. Flossie Botomani	Child Rights Officer H8	Principal Civil and Political Rights Officer H6	Regional Office, Blantyre.
2.	Ms. Naomi Mukhuwa	Receptionist H13	Clerical Officer H12	Corporate Service

### 8.3.3 Resignations of Staff

The following members of staff resigned from the services of the Commission:

NO	NAME	POST	DIRECTORATE
1.	Mr. Mike Chipalasa	Public Relations Officer H6	Management
2.	Mr. Grant Kankhulungo	Director of Economic Social and Cultural Rights H3	Economic Social and Cultural Rights
3.	Mr. Charles Mhango	Director of Civil and Political Rights H3	Civil and Political Rights
4.	Mr. Aggrey Mwale	Director of Corporate Service H3	Corporate Service
5.	Ms. Pemphero Manyawa	Civil and Political Rights Officer H8	Civil and Political Rights
6.	Ms. Tiffany Banda	Principal Child Rights Officer H6	Regional Office, Blantyre.

### 8.3.4 Capacity Development

#### (a) Short Term Training

The Commission, with assistance from Network of African National Human Rights Institutions (NANHRI), in Conjunction with Raoul Wallenberg Institute trained the following members of staff:-

NO	NAME	POST	TITLE OF TRAINING	DATE	VENUE
1.	Mr. Frank Chisambula	Chief Human Resources Management Officer/HIV and AIDS Coordinator H4	Thematic training workshop on non-discrimination and equality with a specific focus on the vulnerable, Johannesburg.	15-19th April, 2013	South Africa
2.	Ms. Grace Jere	Principal Women and Gender Officer H6	Thematic training workshop on non-discrimination and equality with a specific focus on the vulnerable, Johannesburg.	15-19 April, 2013	South Africa
3.	Mr. Mike Chipalasa	Public Relations Officer H6	Thematic training workshop on non-discrimination and equality with a specific focus on the vulnerable, Johannesburg.	15-19 April, 2013	South Africa
4.	Ms. Gertrude Samati	Child Rights Officer H8	Regional Foundation Course in blended learning format on the roles and functions of NHRIs, Abuja.	9-13 September, 2013	Nigeria
5.	Mr. Stuart Mvula	Economic Social and Cultural Rights Officer H8	Regional Foundation Course in blended learning format on the roles and functions of NHRIs, Abuja	9-13 September, 2013	Nigeria
6.	Mr. Zondwayo Nhlema	Elderly and Disability Officer H8	Regional Foundation Course in blended learning format on the roles and functions of NHRIs, Abuja.	9-13 September, 2013	Nigeria

Mr. George Kondowe attended a one-month short-term training in Child Rights Classroom and school management starting from 12th September, 2013 to 12th October, 2013 at Lund University, in Sweden.

In addition, the Internal Procurement Committee (IPC) comprising of Mrs. Grace T. Malera (ES), Mr. Wycliffe Masoo (DDER), Mr. Topkings Nyirongo (CA), Mr. Harry Migochi (DDESCR), Mr. Simeon Matope (Internal Auditor) and Mrs. Rose Mdalla (PO) attended a workshop in Public Procurement that was held at Mponela, Dowa. The aim of the workshop was to acquaint the IPC with the public procurement legislation, guidelines and procedures.



*Training of Commissioners and Directors of MHRC on Human Rights*

#### (b) Long Term Training

In 2013, the following members of staff of the Commission continued to pursue long term training: Ms. Lusako Munyenembe, Principal Economic, Social and Cultural Rights Officer, undertaking a Masters in Human Rights and Development, at the University of Essex in United Kingdom; Ms. Tinkhani Khonje, Principal Disability and Elderly Rights Officer; and Ms. Gladys Vitsitsi, both undertaking Masters Degree Studies in Australia and South Africa respectively.

### 8.3.5 Re-organisation of the MHRC Organisational Structure

The Government, through the Department of Human Resources Management, approved the new organizational structure for the Commission as set out in the Commission's 2011 to 2015 Strategic Plan. The following are therefore the new Directorates for the Commission:-

- Directorate of Economic Social and Cultural Rights;
- Directorate of Civil and Political Rights;
- Directorate of Children Rights;
- Directorate of Women and Gender Rights;
- Directorate of Elderly and Disability Rights;
- Directorate of Corporate Services;

The Corporate Services Directorate comprises the following sections, Finance, Human Resources, Monitoring and Evaluation, Internal Audit, Information Technology, Procurement and Library. In 2013, the Commission continued to roll out its functioning under the re-organised structure.

## 8.4 The 2013 Human Rights Day Commemoration

The Directorate of Corporate Services facilitated the preparations and organisation of the commemoration of the 2013 International Human Rights Day. The Commission joined the rest of the world in commemorating the International Human Rights Day

that falls on 10th December, every year. The commemoration is held in honour of the adoption of the Universal Declaration of Human Rights (UDHR) on 10th December, 1948. For the UN, the human rights day 2013 had special as it marked the 20th anniversary year of the establishment of the mandate of the High Commissioner for Human Rights. As such, the commemoration for 2013 adopted '20 YEARS: WORKING FOR YOUR RIGHTS' as its theme but with the emphasis on the future and identifying the challenges that lie ahead.

Considering the situation in Malawi, the Commission decided to commemorate the day with a focus on the upcoming Tripartite Elections and designed the following theme for the commemoration, "Free And Fair 2014 Tripartite Election: My Right, My Responsibility". This area of focus presented a timely opportunity to continue the discussion that commenced in 2012 on the nexus between elections and the fundamental human right of participating in political decision – making.

The main activity for the commemoration took place on 10th December, 2013, at the Bingu International Conference Centre. The main activity adopted the form of a civic engagement forum. The event mobilized a cross section of stakeholders and citizens to interact and disseminate information relating to human rights promotion, protection and responsibilities, with a specific emphasis on participation rights from which the theme for the commemoration was drawn. Thus, various education and information dissemination activities were used including a high level panel discussion, a human rights march, reading of a Human Rights Day Statement by the President, production and dissemination of IEC materials, production of press releases and radio programmes, production of a television documentary and observance of the 16 days of activism.

The main event was preceded by a Human Rights and 16 Days of Activism Against Gender-Based Violence March that was jointly organised by the Human Rights Commission and the Ministry of Gender, Children and Social Welfare. The March commenced from the Human Rights Commission office premises to the Bingu International Conference Center. Her Excellency the President participated in the march symbolizing Government's commitment to human rights and women's rights issues, and addressed the marchers at the end of the march.

In addition to the above activities, in line with the theme for the 2013 national commemoration, the Commission and its partners organised a High Level Live Radio Panel Discussion on Elections and Human Rights on 9th December, 2013. The Panel Discussion aimed at: creating a space for engagement among stakeholders on the intersection between elections and human rights; stimulating debate and facilitating a constructive dialogue on the level of Malawi's preparedness with respect to the holding of Free and Fair 2014 Tripartite Elections focusing on the roles of key stakeholders, progress and challenges and pragmatic measures for overcoming the obstacles; and, creating room for a critical appraisal of the roles of key stakeholders and generating proposals for pragmatic measures for the way forward.

The Panel Discussion was presided over by Justice Elton Singini (Rtd) and comprised the following panelists: Ambassador Sophie Kalinde, Chairperson, Human Rights Commission; Mrs. Emma Kaliya, Chairperson, NGO-GCN; Reverend Chinkwita, Commissioner, Malawi Electoral Commission; Mr. Loti Dzonzi, the Inspector General of the Malawi Police Service, and Mr. Anthony Kasunda, Chairperson of MISA.



**The Moderator of the Panel Discussion on "Human Rights and Elections" Justice Elton Singini (Rtd) franked by panelists, Ambassador SA Kalinde MHRC Chairperson, and The Inspector General of the Malawi Police Service Mr. Loti Dzonzi**

The following were the discussants: His Excellency Alexander Baum, Head of European Union Delegation; Mrs. Mia Seppo, United Nations Resident Coordinator; Mr. Steven Duwa, Chairperson, Malawi Electoral Support Network; Mr. Ollen Mwalubunju, Executive Director, National Initiative for Civic Education Trust; Mr. Wellington Kuntaja of Malawi Broadcasting Cooperation TV, Dr. Gerald Chigona, Programme Manager, Center for Multiparty Democracy; and Dr. Mary Shawa the Ministry of Gender, Children and Social Welfare. The discussion drew a significant number of participants who actively participated in the discussion. The 2 hour discussion also saw the active participation of a significant number of radio listeners across Malawi through the telephone text session of the programme.



**Discussants in the High Level Live Radio Panel Discussion held on the eve of the International Human Rights Day on the Topic "Human Rights and Elections"**

The Panel Discussion achieved the following outcomes: building greater awareness on the issue of elections and human rights; ensuring greater engagement among stakeholders on the issue of human rights and elections; and ensuring the commitment of the key stakeholders in facilitating processes that will guarantee free and fair 2014 tripartite elections.

**An NGO representative takes the floor during the High Level Live Radio Panel Discussion held on the eve of the International Human Rights Day on the Topic "Human Rights and Elections"**



Through these series of activities of the commemoration of the human rights day, the Commission managed to draw the participation of a cross-section of stakeholders from Civil Society, Government Ministries, Development partners and Donors, Faith-based Organisations, Religious Institutions, Academia, Private Organisations, Traditional Leaders, Religious Leaders and members of the general public, in the 2013 International Human Rights Day Commemoration. The approach of the commemoration of the Human Rights Day and the 16 days of activism against gender-based that was adopted in 2013 contributed to enhancing the profiling of the human rights day as a national event. It also made significant inroads towards ensuring that the Commission positions itself as a lead institution for the national commemoration of the event, and harnessing the efforts of stakeholders into one major event as opposed to uncoordinated sporadic events by different players.

The focus of the theme on elections as a human rights issue contributed to heightening the consciousness raising on the part of the citizenry on this significant event in Malawi. Through the activities adequate information was disseminated to empower people as right holders to claim and defend their human rights where participation in public life, including through elections is concerned. Information relating to the duties and obligations on the part of the right holders and duty bearers in relation to human rights as they intersect with elections was also relayed. The challenge on the part of the Commission is to sustain this national conversation to culminate into the conduct of elections that respect the relevant human rights standards and principles.



*Her Excellency the State President Dr. Joyce Banda joining in the Human Rights and 16 Days of Gender Activism Match met by the Chairperson of MHRC Ambassador Sophie Asimenye Kalinde*

*Part of the procession of the Human Rights and 16 Days of Gender Activism Match that took place on 9th December, 2013, under the theme "Free and Fair Tripartite Elections: My Right and My Responsibility"*



*Arrival of the Guest of Honour Honourable Dr. C. Daza, Minister of Good Governance at the BICC for the Commemoration of the International Human Rights Day on 10th December, 2013*



*Stakeholders sharing notes before the commencement of the Panel Discussion on the eve of the Human Rights Day: Left, Mrs. Emma Kaliya, Chairperson of the NGO Gender Coordination Network and His Excellency Mr. Alexander Baum Head of Delegation of the EU*

*Stakeholders who participated in the Human Rights and 16 Days of Gender Activism Match*

*Moderator and Panelists for the High Level Live Radio Panel Discussion Human Rights and Elections held on the eve of the Human Rights from left to right Mrs. Emma Kaliya, Chairperson of the NGO Gender Coordination Network, Ambassador Sophie Asimenye Kalinde, Chairperson of MHRC, Justice Elton Singini (Rtd), the Inspector General of Police, Mr. Loti Dzonzi and Commissioner of the Electoral Commission Reverend E. Chinkwita*



*A cross section of the Public Rally at the end of the Human Rights and 16 Days of Gender Activism Match*

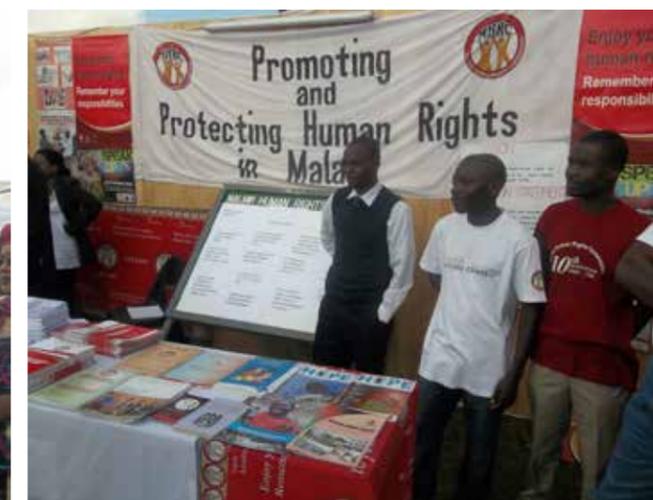


Viewing of displays by Guest of Honour Honourable Dr. C. Daza, Minister of Good Governance at the BICC for the Commemoration of the International Human Rights Day on 10th December, 2013



## 8.5 Library Services

Since the establishment of the Commission, it has managed a fully-fledged library system with various documentaries in stock. The library service is open to members of the general public, the academia, and other stakeholders. In 2013, the library registered an increase of 23% in terms of patronage. The Library section was also instrumental in 2013 in organising displays of MHRC activities at various public functions.



Officers of MHRC showcasing a Display of MHRC Activities at the occasion of the Commemoration of the Public Service Day

The Executive Secretary of MHRC taking a question from the Vice President Right Honourable Khumbo Kachale on the MHRC



The Executive Secretary of MHRC, Mrs. Grace Malera giving remarks at the High Level Live Radio Panel Discussion on "Human Rights and Elections" which was held on 9th December, 2013 as part of the commemoration of the International Human Rights Day



Honourable Minister Clara Makungwa of the Ministry of Gender, Children and Social Welfare, Honourable Minister Geoffrey Kamanya, and Bishop Emelitus Malango during the Commemoration of the International Human Rights Day on

## 8.6 Information Communication Technology (ICT) Services

The Commission's Information and Communication Technology was established to support all the ICT functions of the Commission including website management, technical user support, provision of recommendations for IT resources procurement, installation of hardware and software among others. In 2013 this section undertook the following activities:

- Designing and Development of an Interactive Website: The Commission with funding from the Open Society Initiative for Southern Africa (OSISA) developed an interactive website with the intention of giving viewers a platform to interact freely, share views, give opinion etc. The website is running at [www.hrcmalawi.org](http://www.hrcmalawi.org) and is being hosted by Globe Internet Limited. The Commission also on the social media and its face book page is <https://www.facebook.com/HumanRightsCommissionofMalawi>
- Installation of Local Area Network and Internet at the Regional Office-Blantyre  
In an effort to enhance communication and information sharing, the ICT section embarked on automation of the Regional Office South-Blantyre. This automation process include installation of both wired and wireless Local Area Network and Internet
- Development of Interactive Database: The Commission has also spearheaded the development of an online interactive Database system to support periodic knowledge, skills and experiences sharing forum to avoid duplication of efforts, and at the same time enhance collaboration, create a synergistic network of actors in the area of gender equality and women's rights. This was funded by the UN Women



The Attorney General Mr. Anthony Kamanga, the Law Commissioner and Commissioner of MHRC Mrs. Gertrude Lynn Hiwa SC and the Chairperson of MHRC conferring during the Commemoration of the International Human Rights Day on 10th December, 2013

## 8.7 The Procurement Unit

The Commission, like all public institutions, has a Procurement Unit in line with the Public Procurement Act, (Cap. 37:03 of the Laws of Malawi), and Public Procurement Regulations of 2004. The Procurement Unit is responsible for conducting all procurement activity, in consultation with requisitioning units and subject to Internal Procurement Committee (IPC) approval of key stages in the process.

As a support function, the Procurement Unit carried out a number of functions or activities that facilitated the effective operations of other Directorates as well as complying with the requirements of the regulatory and oversight office of the ODPP. Some of the key activities of the unit were: procurements of goods, works and services, major ones being, procurements related to human rights day commemoration and office security services; production and submission of quarterly reports to the ODPP as required by the Procurement Act; preparation of procurement plan for Tilitonse and NAC projects; drafting bid documents for all MHRC procurement activities, including consultancies; coordinating internal procurement committee activities, including production of minutes and reports; coordinating the training of the internal procurement committee and administering contracts for the supply of goods and services to the Commission.

## 8.8 Public Relations Section

Communication between the Commission and the general public in the year 2013 has been intensive. It is vital that stakeholders and the general public are kept aware of issues of national interest having a bearing on human rights, as well as the activities of the Commission. The Commission carried out several Public Relations activities as discussed below through a number of ways and using various media platforms. In this regard, the Commission produced and aired radio jingles and messages on human rights, and produced and disseminated documentaries. Furthermore, the Commission published press releases on topical human rights issues facing the nation in line with the provisions of the Human Rights Commission Act which gives the Commission the function of commenting publicly or as it sees fit on any general or specific situation of violation of human rights and to recommend initiatives or measures to put an end to such situation. Some of the press releases which were issued were:

- a) Press Release on Declaration of Assets: whereby the Commission stated its position on the need for the President and the Vice President and other Public Officers to comply with the constitutional requirement on the Declaration of Assets. The Press Release was signed on 4th July and appeared in the Nation Newspaper and Sunday Times of 6th July and 7th July respectively
- b) Press Release on Reports of Alleged Misappropriation of Public Resources: whereby the Commission commented on the issue of the corruption with respect to public resources in the wake of the Cashgate scandal. The Commission made a number of recommendations to Government on an effective response to the issue.
- c) Press Release on January, 2013 Demonstration in Malawi: In this statement, the Commission reminded various concerned parties and members of the general public of the constitutional guarantee on the right to hold demonstrations peacefully and unarmed and the responsibilities that go with the right. The press release was issued ahead of calls by concerned groups of the citizenry to hold demonstrations against the government and attempts by some players to prevent the demonstrations from taking place.
- d) Press Release on Industrial Action by Employees from Essential Services Institutions. This press release aimed at condemning industrial actions by employees from essential service institutions and the causative factors which led to deterioration of services and loss of life in hospitals, bearing in mind the human rights repercussions of such industrial actions. The press release was issued in the wake of a series of strikes or sit in which employees of public health facilities were holding.

In addition, the Commission held press conferences, including the one which was held on 5th September, 2013, at Cross Roads Hotels in Lilongwe, whereby the Status of Human Rights reports which the Commission produces periodically were disseminated. The Conference attracted 22 media houses and led to a comprehensive news items coverage including development of special programmes on the Commission's reports by both print and electronic media.

Lastly but not least, the Commission revived and launched its website in a bid to enhance the accessibility of its information to its stakeholders. The revival of the Commission's website which is running at <http://www.hrcmalawi.org>, enables the Commission to post important human documents on the website as a means of dissemination. The interactivity element of the website has also enabled the general public to give feedback on a number of issues.



*MHRC Chairperson Ambassador Sophie Asimenye Kalinde holding a Press Briefing in Mzimba District*

## 8.9 Financial Management

The Commission receives subventions from the Government in form of Personal Emoluments and Other Recurrent Transactions. In 2013/14, the approved budget for Personal Emoluments was K262, 319,976 compared to K248, 802,792 for 2012/2013 financial year. Other Recurrent Transaction which is used for operations moved from K38, 581, 013 in 2012/13 to K110, 069,071.

The Commission also received other financial assistance from various partners as presented in the table below. A detailed financial statement is attached as Appendix II

Source	Receipts	Payments
Malawi Government		
Personal Emoluments and Benefits	276,464,069.41	276,464,069.41
Other Recurrent Transaction (ORT)	52,319,955.00	52,319,955.00
	328,784,024.41	328,784,024.41
Grants/Assistance		
UNDP		
Malawi Human Rights Support Project	68,717,292.00	68,717,292.00
EU Democratic Governance Programme		
Sensitize Lay Magistrates, Police Prosecutors and Social Welfare officers on child justice core competencies with focus on child care protection and Justice Act (CCPJ Act, 2010)	4,690,805.00	4,690,805.00
Establish and train desk officers in government Ministries and Departments on Disability and Elderly Rights	3,010,769.00	3,010,769.00
Review human rights training manual for Malawi Police services and Malawi Prison facilitated by MHRC	4,327,419.00	4,327,419.00
Public enquiry into restorative justice focusing on gender based violence	3,712,673.67	3,712,673.67
Conduct investigations	2,291,700.00	2,291,700.00
Human rights situation monitoring visits to prisons and places of detention in all regions in Malawi	2,410,190.00	2,410,190.00
Conduct Public enquiry on Child maintenance and Gender Based Violence (GBV)	3,197,536.82	3,197,536.82
Establish and train desk officers in government Ministries and Departments on Disability and Elderly Rights	1,847,432.75	1,847,432.75
Facilitate discussion on State Party reporting regarding the international covenant, Economic, Social and Cultural Rights	598,184.03	598,184.03
Facilitate working session on the preparation for the convention against Torture (CAT) state party report	2,487,600.80	2,487,600.80
Human Rights discussion session with CSO & key Government representatives on climate change and Environmental Management	848,377.70	848,377.70
Conduct situation analysis of the rights of the elderly in Malawi	2,005,136.88	2,005,136.88
Thematic discussion sessions on Human Rights based approaches with key stakeholders - Discussion meetings	1,954,118.00	1,954,118.00
Review human rights training manual for Malawi Police services and Malawi Prison facilitated by MHRC	2,378,370.00	2,378,370.00
Project wide visibility initiatives - Printing of MHRC reports	4,630,000.00	4,630,000.00
Commemoration of International Human Rights Day - Human Rights Day Commemoration	3,103,319.50	3,103,319.50
Conduct on spot investigations, alternative dispute resolution on cases of complaints of human rights violations in targeted districts		

Source	Receipts	Payments
	45,002,691.97	43,408,153.22
National AIDS Commission		
HIV and AIDS mainstreaming	20,793,729.94	12,073,491.61
UNICEF		
Child protection activities	16,556,450.00	22,669,350.20
PLAN Malawi		
Child Protection National Project	22,402,451.00	16,988,245.83
UNFPA		
Strengthening Gender mainstreaming in the ministry and transport sector	9,716,496.28	5,683,709.35
UN WOMEN		
Scaling up Women's Rights realisation and Gender equality attainment	12,600,000.00	8,667,399.91
IRISH AID		
Good Governance for Development: Capacity Building of Selected Duty Bearers on Human Rights and Rights Based Approaches	30,250,000.00	0.00
Total	554,823,135.60	519,337,511.72

Note:

- Personal Emoluments and Other Recurrent Transactions receipts and expenditures for 2013 reflects two half financial years' transactions of 2012/2013 and 2013/2014 financial years of the Malawi Government.
- Irish Aid funds were received on 30th December 2013.

## 8.10 Challenges

In 2013, the Commission continued to face the following main challenges:

- shortage of staff in all Directorates, due to the huge number of vacancies within its establishment which remain unfilled, leading to challenges in implementing some activities;
- inadequate and outdated equipment as most computers in the directorates are obsolete. This greatly affects the delivery rate. The Commission does not have the necessary equipment it requires such as mega phones for public meetings and digital camera to record important Commission's activities;
- the Commission has inadequate, unsuitable and insecure office space at the headquarters resulting in most officers sharing small rooms; and
- the perpetual low annual funding from Government affected the operations and implementation of activities of the Commission so that some activities were either not fully carried out or not at all.

# Conclusion

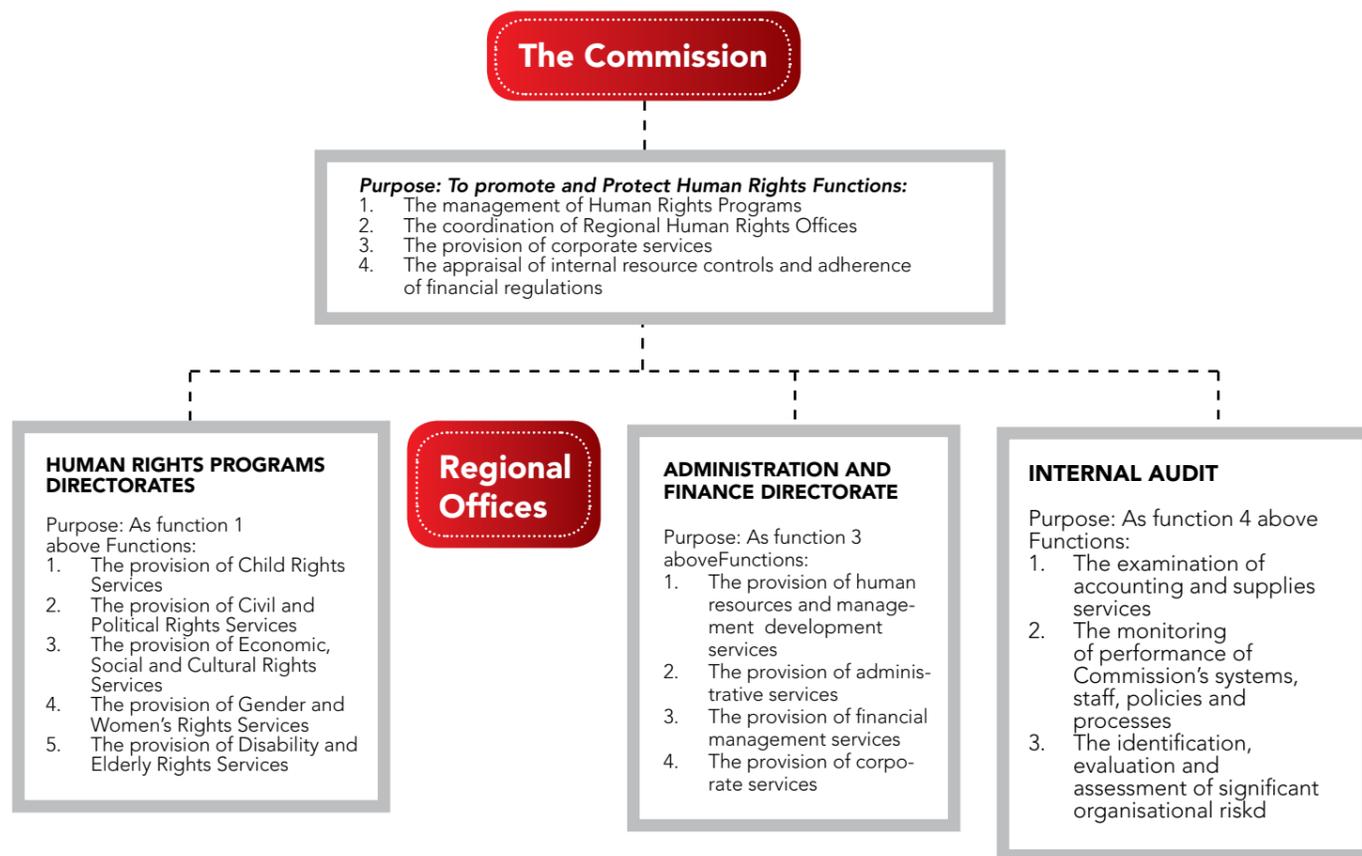
In conclusion, the 2013 Annual Report of the Commission covers the activities that the Commission undertook in the period January to December 2013. These activities were implemented in line with the Commission's broad mandate of promoting and protecting human rights and investigating violations of human rights.

In 2013, the Commission undertook a considerable amount of work in the area of complaints handling. A total of 516 complaints were registered signifying a 47% increase from the 351 complaints that were registered in 2012. The Commission attributes this increase to the reorganization of the Commission from functional approach to thematic approach where the Commission has been able to enhance on its capacity to generate the demand for its services in other thematic areas of human rights, including from vulnerable categories. This raise is also attributed to some massive community campaigns that were held during the sixteen days of activism on gender based violence.

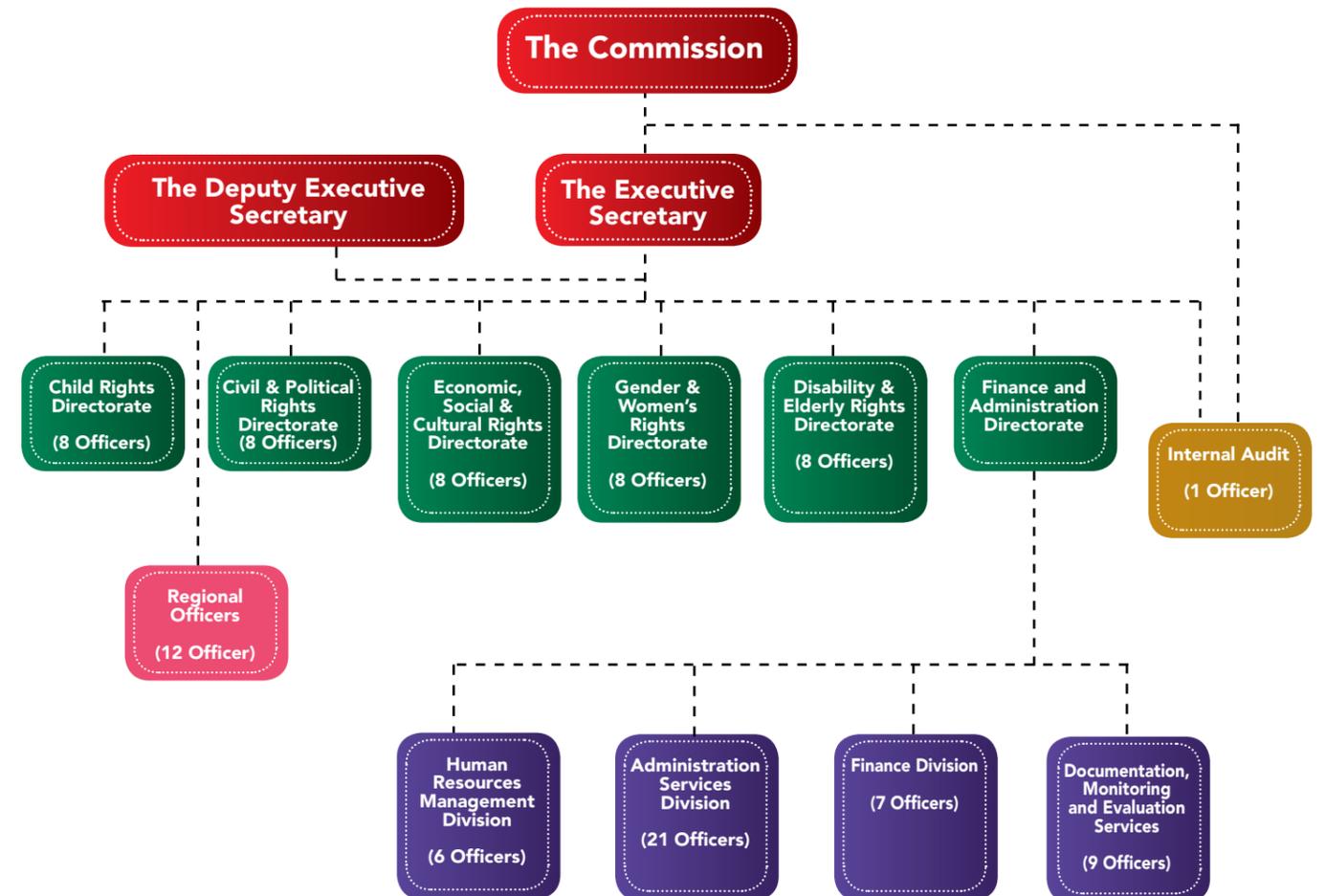
It is important to note that in 2013, the Commission increasingly handled complaints in the two broad thematic areas of civil and political rights, and economic, social and cultural rights as the situation was in 2012. Some of the major issues handled related to issues of: incidences of torture; unlawful arrests; deaths in police custody; poor conditions of detention; access to justice and legal remedies; labour issues including strikes and lock outs in essential services delivery institutions; access to land; and, the impact of the rising cost of living on the right to a decent standard of living.

While the Commission on the one hand faced critical challenges and constraints largely due to inadequate financial, human and material resources, it is pleasing to note that, in the face of these challenges, on the other hand, 2013 was a remarkable year for the Commission. Considerable strides were recorded in the discharge of the Commission's mandate, with emphasis on addressing the human rights of vulnerable groups.

## APPENDIX 1: ORGANIZATIONAL CHART FOR MALAWI HUMAN RIGHTS COMMISSION (1A)



## APPENDIX 2: ORGANIZATIONAL CHART FOR MALAWI HUMAN RIGHTS COMMISSION (1B)



# Notes:



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