The Human Rights Commission (the Commission), has the pleasure and honour to present to Parliament its 15th 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 in the year 2014, and it highlights among others, some of the challenges the Commission faced in its quest 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.

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Ambassador Sophie Asimenye Kalinde
CHAIRPERSON

Acknowledgements

The compilation and production of the 2014 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. George Chiusiwa, Mr. Stuart Mvula, Mr. Ezra Gondwe, Mr. George Kondowe and Ms. Grace Jere. The contribution and efforts of this task force are greatly appreciated. Special recognition goes to Mrs. Grace 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, who were specifically assigned with the task of supervising the compilation of this Report, are also specially acknowledged for their contribution. The overall supervision of the Chairperson, Ambassador Sophie Asimenye Kalinde, ensured the Report’s timely compilation and production.

The Commission would also like to express its gratitude to all the stakeholders and partners that contributed to its work in 2014. 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 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, who continued to play the key role of being important and 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 2014.

Last but not least, the Commission is greatly indebted to the people of Malawi and all stakeholders 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 2015, and beyond.
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Malawi Human Rights Commission

The Commissioners

Commissioner Ambassador Mrs. Sophie Asimwenye 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 Adviser 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. He is a member of the Commission’s Appointments and Disciplinary Committee. She also serves in the Finance and Audit Committee.

Commissioner Rev. Dr. Zac Kawalala is an Accountant by profession and a Pastor by calling. He holds a Bachelor’s degree in Commerce from the University of Malawi – Polytechnic and also holds Bachelor’s and Masters Degree in Theology from the University of Malawi. He is an ISA Fellow in International Business Law and an Associate of the Chartered Institute of Arbitrators. He has over 16 years legal experience as he started practising in 1997, with Muungana and Company. He is a founding partner of TF Partners. He is engaged in civil litigation and drafting of legal documents. He has a number of notable human rights publications including: Dictatorship in Malawi(2007) and Civil Procedure in Malawi(2011). Commissioner Chilanga 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 Appointments and Disciplinary Committee. He is a member of the UN Working Group on Business and Human Rights.

Commissioner Dalitso Kingston 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), with the University of Antwerp in Belgium. He also holds a Bachelor of Science degree in Agriculture (Agricultural Economics) from the University of Malawi. He is the Executive Director for the Malawi Economic Justice Network (MEJN), a non-governmental human rights organisation established in 1997. Commissioner Chilanga 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 Appointments and Disciplinary Committee. He is a member of the UN Working Group on Business and Human Rights.

Commissioner Mr. Stephen Nkobe is an Economist by profession. He holds a Masters Degree in Economics and Social Studies, a Bachelor’s 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 funding (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/CU Micro-projekts 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 member of 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 Fabham, 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 Chairman 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 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 meetings 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 Dalitso Kingston Kubalasa is a Human Rights Commissioner by virtue of her being the Ombudsman. She brings to the Commission her 30 years experience 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 worked with Save the Children (US), UNHCR and has served as a legal advisor to many local and international organisations and companies such as Lilongwe City Assembly, Malawi Dairy Board, TAMPA, and INDEFund. As a Commissioner she is responsible for the Directorate of Disability and Elderly Rights and Administration.
The Management Team

Mrs. Grace T. Malera  
(Executive Secretary)

Mr. Emmanuel Konzakapansi  
(Deputy Executive Secretary)

Mr. Harry Migochi  
(Dir. of Economic, Social & Cultural Rights)

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

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

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

Mr. Winston Mwafurwa  
(Dir. of Administration & Financial)

Mr. Peter Chilai  
(Dir. of Civil and Political Rights)
The Executive arm of Government, including all former and the current President, His Excellency Professor Arthur Peter Mutharika, the Parliament, the Judiciary and several Government Ministries and its Agencies such as: the Ministry of Justice and Constitutional Affairs; the Ministry of Gender, Children, Disability and Social Welfare; the Ministry of Home Affairs and Internal Security; the Office of the President and Cabinet; the Ministry of Finance; the Department of Human Resources and Development; the Law Commission; the Office of the Ombudsman; provided the necessary support to the work of the Human Rights Commission, premised on the fundamental principle of recognition of the Commission as an independent constitutional body. This is highly appreciated as it led to the continued positioning of the Human Rights Commission as one of the truly independent National Human Rights Institutions in Africa and internationally.

Several Civil Society Organisations also played a very supportive role to the Commission during my term of office. Development Partners continued to prove to be a very strategic partner for the Commission. The entire National Human Rights Institutions (NHIRIs), Family both within the Network of African National Human Rights Institutions, (NANHRI), with the leadership of its Secretariat by Mr. Gilbert Sebilhogo, and its past and current Chairperson and other regional National Human Rights Institutions of Europe, Asia Pacific the Caribbean, and the Common wealth Forum of National Human Rights Institutions, as well as the International Coordinating Committee for NHIRIs, (ICC), all provided a very strong support system to the Commission. It is my hope that my successor will build on this closely knit web of collaboration and support system for the betterment of the work of the Commission.

As our tenure of office expires, it is worthwhile to reflect on the achievements that have been recorded, as well as challenges that are outstanding. It is said that we can only pragmatically and effectively move forward if we embrace both our gains and losses, as learning points for shaping the future. In this regard, I would like to point out that, what I see as a hallmark of the 5th cohort of the Commission which I have had the privilege to lead is the persistence with which we safeguarded one of the Commission’s defining values, as set out in the 2011 to 2015 Strategic Plan, that of “Independence”. I and my fellow Commissioners of this 5th Cohort can without fear of contradiction affirm that we fearlessly carried out our work, and stayed true to the oath of office that we took to discharge our functions without fear or favour. This is evident from the continued accreditation of the Commission as an “A” status institution, by the ICC within the United Nations human rights mechanism, under the auspices of the Office of the High Commissioner of Human Rights.

Since 2012, when the Commission’s accreditation status was due for review, I and my fellow Commissioners have consistently stayed on the course of constructive engagement with the ICC, ensuring implementation of its recommendations, in order for the Commission to retain its “A” status. At the time of writing this report, the Commission had just undergone an 8th assessment session. The ICC deferred the Commission’s accreditation to 2016, taking the position that in interim the Commission maintains its ‘A’ status. Further that the Commission should continue to advocate for the necessary amendment of the Human Rights Commission Act, for the Commission to satisfy the accreditation requirements.

I sincerely hope for positive result in 2016 as the Commission has so far undertaken the necessary steps to comply with the internationally agreed standards for NHIRIs. In this vein, I should specifically acknowledge the support and collaboration of the Ministry of Justice and Constitutional Affairs and urge the Ministry to ensure that the necessary amendments to the Human Rights Commission Act are concluded and timely enacted into law before the next accreditation session in 2016. To the successor 6th cohort of the Commission, I would like to point out that the issue of the accreditation of the Commission is one of the priority policy issues that will have to be taken up with decisiveness and robustly.

My tenure of office also saw the Commission rising to the enormous challenge of overseeing a restructuring process of the Commission. In line with the Strategic Plan of 2011 to 2015, the Commission underwent a major restructuring. It is therefore pleasing to note that, this far, the Commission has effectively taken off under the re-organised structure. The results have started to progressively show. Nonetheless, the long term impact has yet to be measured. In the medium term, the one remarkable outcome is the equal attention which all human rights thematic areas are receiving, as opposed to the trend in the past, where issues of civil and political rights tended to receive the most attention, at the expense of the other categories of human rights.

Another milestone for this tenure of office has been through the increased engagement of the Commission with the various mechanisms of the African Union and United Nations Human Rights System.

Another milestone for this tenure of office has been through the increased engagement of the Commission with the various mechanisms of the African Union and United Nations Human Rights System. For the first time, the Commission took its role of “contributing to state party reporting mechanisms” as spelt out in the Human Rights Commission Act seriously. This has seen increased collaboration with the Ministry of Justice and Constitutional Affairs leading to the compilation of state party reports submitted to both the United Nations and African Commission, thereby gradually clearing the backlog of state party reports. State party reports on the African Charter on Human and Peoples Rights; the International Covenant on Civil and Political Rights; and the Universal Periodic Review, have since been submitted and considered. At the time of writing this Report, the state party reports on the Convention Against Torture; and the International Covenant on Human Rights System.

It has been a great privilege and honour to serve as Chairperson of the Human Rights Commission since 2012. The present cohort of Commissioners’ term of office expires in July, 2015. It is therefore befitting in authoring the preamble to the 2014 Annual Report, I should start with paying tribute to all those that have contributed to the effective functioning of the Commission during these 3 years. I want to pay tribute to all the Commissioners, past and present, whose dedication to the Commission has seen it
Economic, Social and Cultural Rights are being compiled. In appropriate circumstances, the Commission has also compiled and submitted alternative reports to these agencies. This has strengthened the mechanisms for human rights accountability.

Following a lengthy period of time when the Commission had delegated on its statutory responsibility of conducting public inquiries to address human rights abuses and violations of a systemic nature, during the 5th Cohort’s tenure of office, several public inquiries were carried out. From 2002 when one public inquiry was carried out on religious and political intolerance, followed by another public inquiry in 2010, on the status of maternal health rights, in the last 3 years, the Commission carried out 5 public inquiries on: access to justice by victims of gender-based violence; the status of sexual and reproductive health rights; status of the human rights of persons with disabilities; and child maintenance. The recommendations of all these inquiries have been used to inform the Commission’s programming, as well as informing the effective and constructive engagement with relevant duty bearers.

In addition to a number of comprehensive research programmes on relevant human rights issues, the 5th cohort consistently carried out its monitoring function, leading to the revival of the publication of periodic status of human rights reports. The Commission has thus robustly used these ‘status of human rights’ reports to engage with relevant duty bearers including the Presidency. To date, the Commission under the 5th cohort has released 3 general status of human rights reports, in addition to several subject-specific status of human rights reports that have focused on issues such as: the status of human rights in prisons and police cells; the status of availability of maize in ADMARC Depots; monitoring of child care institutions, including orphanages; monitoring of the status of human rights in the extractive industry; monitoring of public hospitals, and monitoring of the May, 2014 Tripartite Elections, to cite a few examples.

During the 5th cohort’s tenure of office, the Commission also continued to handle a considerable number of human rights violations complaints through investigations, alternative dispute resolution and litigation. One notable achievement in this area is the resentencing hearings for close to 200 death row inmates, which the Commission is facilitating in collaboration with several partners. This is in a bid to enhance access to justice for vulnerable categories. There were also a lot of significant human rights education activities carried out, including the long term training of primary school teachers in collaboration with Malawi Institute of Education. Furthermore, the Commission has been instrumental in leading the national commemoration of the international human rights day. My tenure of office has also seen an increased and effective networking and collaboration with various stakeholders in the governance and human rights sector at the community levels through human rights clubs and CBOs, among others and at the national level, e.g. Government ministries and departments, CSOs and development partners.

Most importantly, during these 3 years, the cohort put considerable efforts in consolidating the resource base of the Commission, particularly financial and material resources through a sustained donor confidence in addressing. Some of the key challenges include: inadequate funding to the Commission, especially in the form of the funding from Treasury on Other Recurrent Transactions (ORT); the low staffing levels, with the Commission operating with only half of its approved establishment; the shortage of material resources, especially vehicles, which greatly affected the mobility of the Commission; problems with accessibility of the Commission, with one regional office in Lilongwe and one office in Blantyre, with the one office that was duly approved to be opened in Mzuzu never getting allocated funding for its operationalisation by Government. The lack of a fully decentralised structure of the Commission greatly affected its accessibility by people in all the three regions of the country. All in all, notwithstanding the challenges the 5th cohort of the Commission managed to perform optimally. What is encouraging is the fact that there are several opportunities within the human rights and good governance architecture nationally and internationally, which the Commission needs to continue to tap into for continued improvement in its efficiency and effectiveness. Government continues to demonstrate the political will towards ensuring the effective functioning of independent constitutional bodies such as the Commission.

The forthcoming cohort would therefore do well to capitalise on this political will, while at all times striking that delicate balance of performing an oversight role over Government, especially in instances of excesses of power that lead to violation of human rights, while at the same time maintaining a constructive working relationship. The dividing lines between playing the role of sustained, proactive constructive and practical oversight and passive and counterproductive oversight can be very fine at times.

There is obviously always room for doing better, but the 5th cohort of the Commission did its best. We envisage that the 6th Cohort of the Commission will build on our successes; work on our failures, drawing lessons from them to take the Commission to even greater levels of performance. It has been a privilege and honour to serve as Commissioners of the 5th Cohort of the Commission for which I and my colleagues are grateful.

Ambassador Sophie Asimenye Kalinde
Chairperson
Executive Summary

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, (Cap. 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 2014, 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 relating to complaints handling; human rights monitoring, research and advocacy, human rights education, information and training, state party reporting, among other functions, in these human rights thematic areas is reviewed.

The Report starts with a foreword by the Commission’s chairperson, who reflects on the 3 year term of office of the Commission which expires in July, 2015. The main part of the Report is divided into the 6 principal areas of activities. The Report also features 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, 2014. 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 decrease in the number of cases registered compared to those in 2013. In 2014, the Commission registered a total of 358 complaints signifying a 30.6% decrease from the 516 complaints that were registered in 2013. The Commission attributes this decrease to: the multiplicity of actors that are engaged in human rights violations complaints handling; a rise in violations that go unreported; inaccessibility of the Commission; lack of knowledge on the part of victims; among other reasons. This trend makes it imperative for the Commission to strengthen its human rights civic education activities, including through relevant players particularly at district and village levels, as well as strengthening its network for registration of complaints of human rights violations.

The Report details several activities which the Commission carried out in 2014 in the area of civil and political rights, including, facilitation of resentencing hearing proceedings for death row inmates under a Tilitonse funded Project. The project is being implemented in conjunction with the Office of the Director of Public Prosecutions, the Legal Aid Department, the Judiciary, Malawi Law Society, Faculty of Law Chancellor College, the Malawi Prison Service, Paralegal Advisory Services (PASI) and the Centre for Human Rights, Advice and Education (CHREAA), and Northwestern University, aimed at bringing the concerned prisoners to court to undergo a sentence re-hearing.

A lot of preliminary work for the resentencing project was carried out in 2014, including stakeholder engagement, tracing of files, interviews with the prisoners, a series of training for law students, paralegals and lawyers in mitigation investigation techniques and plea / sentence negotiation. 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 2014 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 analysis of the Child Rights situation in Malawi, monitoring of Child Care Institutions including those of learners/children
Another milestone for this tenure of office has been through the increased engagement of the Commission with the various mechanisms of the African Union and United Nations Human Rights System.

monitoring exercise mainly focused on the health and education sectors. These two sectors were isolated because they are central for any person's ability to enjoy any other rights that are guaranteed by the constitution and international human rights law. The findings of the monitoring exercise revealed that the prevailing situation of drug availability at most health centres was very pathetic as most essential drugs were out of stock.

In terms of education, the monitoring found that since money that was intended for construction of school blocks was syphoned out and no school blocks were constructed. This led to school children in some instances learning under the trees and without all the necessary learning aids. Consequently, the exercise revealed that in almost all the schools visited, there were learners with disabilities but no specialized teachers qualified in Special Needs Education (SNE). It was also reported that students and pupils with low or poor vision among other learning difficulties, are only assisted by ensuring that they sit near the chalkboard.

Furthermore, the Commission conducted a number of public inquiries in a bid to clearly understand some systemic human rights violations. The Commission conducted a public inquiry on Gender Based Violence in Nkhotakota. This inquiry was aimed at establishing the responsiveness and effectiveness of the justice system in Malawi with respect to access to redress services for gender based violence cases in order to contribute to improved access to quality and responsive justice for all. The inquiry strengthened the link between the formal and informal justice systems at community level. It also empowered communities to seek and demand their right to access to justice.

The Commission also conducted a public inquiry on the status of Sexual and Reproductive Health Rights (SRHR), aimed at establishing key challenges and opportunities with respect to access and utilisation of SRHR services and products. The inquiry provided community members with a forum to engage with duty bearers.

The Report further outlines the various activities that were carried out by the Commission's 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 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.
Chapter One: Background Information

1.0 Introduction

This Report is the 15th Annual Report of the Commission. It highlights the extent to which various activities have been undertaken to actualize outcomes set out in the Strategic Plan, and further to realise the Commission's mandate as provided for in section 129 of the Constitution and the Human Rights Commission Act (Cap 3:08 of the Laws of Malawi). The Report also presents some of the challenges the Commission faced in its quest 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. The Report has been compiled in accordance with section 37 of the Human Rights Act, (Cap 3:08 of the Laws of Malawi), which obligates the Commission to submit to Parliament a report of its operations in a calendar year.

The Commission is established by 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 the 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:

a. to act as a source of human rights information for the Government and the people of Malawi;
b. to assist in educating the public on, and promoting awareness and respect for, human rights;
c. to promote more particularly the human rights of vulnerable groups, such as children, illiterate persons, persons with disabilities and the elderly;
d. 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;
e. 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,
f. 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:

a. 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;
b. 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;
c. 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

d. to comment publicly or as it sees fit on any general or specific situation of violation of human rights and w recommend, initiatives or measures to put an end to such situation;
e. to promote ratification by Malawi of any international human rights instruments;
f. 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;
g. 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;
h. 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;
i. 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;
j. to publicize human rights with the aim of increasing public awareness.
k. to promote ratification by Malawi of any international human rights instruments; and,
l. 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 realization of its mandate of promotion and protection of human rights. The vision, mission, values and goals of the Commission are the following:
The Goals that guide the Commission as outlined in the Strategic Plan are:

a. people in Malawi (particularly the most vulnerable groups) know, understand and freely exercise their human rights;
b. 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;
c. effective partnership with official and non-governmental organizations and other civil society organizations and enhancement of their human rights capacity; and
d. 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 six Directorates as follows:

a. Directorate of Civil and Political Rights;
b. Directorate of Economic, Social and Cultural Rights;
c. Directorate of Gender and Women’s Rights;
d. Directorate of Child Rights;
e. Directorate of Disability and Elderly Rights; and
f. Directorate of Corporate Services.
Chapter Two: 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 that 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 District Social Welfare Offices); the District Labour Offices; the National Initiative for Civic Education Trust (NICE); and various Non-Governmental Organisations (NGOs), and Community Based Organizations (CBOs).

2.1 Case statistics

In 2014 the Commission received and registered a total of 358 complaints down from the 516 cases that it received in 2013 representing a 30.6% decrease. Several factors may explain the reasons for this downward trend, including the multiplicity of actors that are engaged in human rights violations complaints handling; a rise in violations that go unreported; inaccessibility of the Commission; lack of knowledge on the part of victims; among other reasons.

In the absence of an empirical survey on the issue, this report cannot be conclusive as to the causes of the downward trend. Suffice to highlight that this trend makes it imperative for the Commission to strengthen its human rights civic education activities, including through relevant players particularly at district and village levels, as well as strengthening its network for registration of complaints of human rights violations.

The 358 cases that the Commission registered were broadly categorised into the following five thematic categories; civil and political rights; economic social and cultural rights; child rights; gender and women rights; and disability and elderly rights.

Table 1 below shows that the economic, social and cultural rights category received 172 cases representing the majority of cases at 48%. This could be a possible pointer to a growing consciousness on the part of the citizenry on their entitlements with respect to this category of rights.

In the past the majority of cases of human rights violations were registered in the civil and political rights category. Nonetheless, although there seems to be that paradigm shift, civil and political rights also continue to register a greater number of reported cases, with a total of 99 registered in 2014, representing 27.7%.

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Table 1: Table showing cases registered according to directorate

<table>
<thead>
<tr>
<th>Human Rights Category</th>
<th>No of complaints registered</th>
<th>Percentage of Total (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child rights</td>
<td>40</td>
<td>11.1</td>
</tr>
<tr>
<td>Civil and political rights</td>
<td>99</td>
<td>27.7</td>
</tr>
<tr>
<td>Gender and women rights</td>
<td>35</td>
<td>9.8</td>
</tr>
<tr>
<td>Economic social and cultural rights</td>
<td>172</td>
<td>48.0</td>
</tr>
<tr>
<td>Disability and elderly rights</td>
<td>12</td>
<td>3.4</td>
</tr>
<tr>
<td>TOTAL</td>
<td>358</td>
<td>100</td>
</tr>
</tbody>
</table>

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<td>Economic social and cultural rights</td>
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</tr>
<tr>
<td>Disability and elderly rights</td>
<td>12</td>
</tr>
<tr>
<td>TOTAL</td>
<td>358</td>
</tr>
</tbody>
</table>
2.2 Nature of complaints registered

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

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

<table>
<thead>
<tr>
<th>Nature of alleged violation</th>
<th>Right violated</th>
<th>Case registered</th>
<th>Percentage of Total (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to Fair Labour Practices</td>
<td>Economic and cultural</td>
<td>86</td>
<td>24</td>
</tr>
<tr>
<td>Right to Access to Justice</td>
<td>Civil and political</td>
<td>51</td>
<td>14.2</td>
</tr>
<tr>
<td>Right to Human Dignity</td>
<td>Civil and political</td>
<td>23</td>
<td>6.4</td>
</tr>
<tr>
<td>Child Rights</td>
<td>Child rights</td>
<td>40</td>
<td>11.2</td>
</tr>
<tr>
<td>Right to Life</td>
<td>Civil and political</td>
<td>4</td>
<td>1.1</td>
</tr>
<tr>
<td>Right to fair administrative justice</td>
<td>Economic and cultural</td>
<td>8</td>
<td>2.2</td>
</tr>
<tr>
<td>Right to property</td>
<td>Economic and cultural</td>
<td>14</td>
<td>3.9</td>
</tr>
<tr>
<td>Right to economic activity</td>
<td>Economic and cultural</td>
<td>8</td>
<td>2.2</td>
</tr>
<tr>
<td>Right to deceased property</td>
<td>Economic and cultural</td>
<td>16</td>
<td>4.5</td>
</tr>
<tr>
<td>Right to movement and residence</td>
<td>Civil and political</td>
<td>2</td>
<td>0.6</td>
</tr>
<tr>
<td>Right to Land</td>
<td>Economic and cultural</td>
<td>17</td>
<td>4.7</td>
</tr>
<tr>
<td>Right to health and social services</td>
<td>Economic and cultural</td>
<td>5</td>
<td>1.4</td>
</tr>
<tr>
<td>Right to family life and marriage</td>
<td>Economic and cultural</td>
<td>19</td>
<td>5.3</td>
</tr>
<tr>
<td>Right to personal liberty</td>
<td>Civil and political</td>
<td>19</td>
<td>5.3</td>
</tr>
<tr>
<td>Right to education</td>
<td>Economic and cultural</td>
<td>8</td>
<td>2.2</td>
</tr>
<tr>
<td>Right to equality</td>
<td>Civil and political</td>
<td>7</td>
<td>2.0</td>
</tr>
<tr>
<td>Right to food</td>
<td>Economic and cultural</td>
<td>1</td>
<td>0.3</td>
</tr>
<tr>
<td>Right to development</td>
<td>Economic and cultural</td>
<td>5</td>
<td>1.4</td>
</tr>
<tr>
<td>Right to housing</td>
<td>Economic and cultural</td>
<td>2</td>
<td>0.6</td>
</tr>
<tr>
<td>Right to persons with disability</td>
<td>Economic and cultural</td>
<td>11</td>
<td>3.1</td>
</tr>
<tr>
<td>Right to water</td>
<td>Economic and cultural</td>
<td>2</td>
<td>0.6</td>
</tr>
<tr>
<td>Right of prisoners and detained persons</td>
<td>Civil and political</td>
<td>2</td>
<td>0.6</td>
</tr>
<tr>
<td>Freedom of conscience and religion</td>
<td>Civil and political</td>
<td>2</td>
<td>0.6</td>
</tr>
<tr>
<td>Rights unique to women</td>
<td>Gender and women</td>
<td>6</td>
<td>1.7</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>358</td>
<td>100</td>
</tr>
</tbody>
</table>

2.3. Cases registered according to gender

Table 3 below shows total number of complaints registered according to gender. The table indicates that most of the cases (229) representing 64% were lodged by males and mostly on behalf of their female counterparts. It is important to note that the interplay between cultural, economic and social determinants play a major role in the fulfilment of human rights. In this regard, females still depend on their male counterparts, (i.e. uncles, husbands, sons etc) even on the point of entry into the formal justice system, i.e. complaint reporting.

Table 3: Table showing complaints registered according to gender

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
<th>Group</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number</td>
<td>229</td>
<td>125</td>
<td>4</td>
<td>358</td>
</tr>
<tr>
<td>Percent</td>
<td>64%</td>
<td>35%</td>
<td>1%</td>
<td>100%</td>
</tr>
</tbody>
</table>

2.4 Cases registered according to Districts

The Commission receives complaints from different districts in the country, as well as from other countries. Table 4 below shows statistics of complaints registered in accordance with districts, with the exception of one case that was reported by a person residing in South Africa. Lilongwe district remains the highest with a total of 213 complaints, which represents 63%. Blantyre and Mchinji came second and third with 57 and 14 cases representing 16% and 4% respectively. The statistics show that people from the southern and eastern regions are increasingly accessing the Commission’s regional office in Blantyre. Notably, there were no complaints which were received from Likoma District, entailing the need to ensure that deliberate measures are put in place to strengthen outreach activities and access of the Commission by people of the District.
Table 4 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.

<table>
<thead>
<tr>
<th>District</th>
<th>Cases registered</th>
<th>Percent of Total (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lilongwe</td>
<td>213</td>
<td>59.3</td>
</tr>
<tr>
<td>Dowa</td>
<td>10</td>
<td>2.8</td>
</tr>
<tr>
<td>Machinga</td>
<td>2</td>
<td>0.6</td>
</tr>
<tr>
<td>Dedza</td>
<td>9</td>
<td>2.5</td>
</tr>
<tr>
<td>Kasungu</td>
<td>4</td>
<td>1.1</td>
</tr>
<tr>
<td>Nkhatamba</td>
<td>2</td>
<td>0.6</td>
</tr>
<tr>
<td>Mzimba</td>
<td>7</td>
<td>2.0</td>
</tr>
<tr>
<td>Thyolo</td>
<td>1</td>
<td>0.3</td>
</tr>
<tr>
<td>Balaka</td>
<td>3</td>
<td>0.8</td>
</tr>
<tr>
<td>Mchinji</td>
<td>3</td>
<td>0.8</td>
</tr>
<tr>
<td>Mzuzu</td>
<td>4</td>
<td>1.1</td>
</tr>
<tr>
<td>Blantyre</td>
<td>57</td>
<td>15.9</td>
</tr>
<tr>
<td>Mulanje</td>
<td>2</td>
<td>0.6</td>
</tr>
<tr>
<td>Mchinji</td>
<td>14</td>
<td>3.9</td>
</tr>
<tr>
<td>Mangochi</td>
<td>5</td>
<td>0.8</td>
</tr>
<tr>
<td>Salama</td>
<td>6</td>
<td>1.7</td>
</tr>
<tr>
<td>Karonga</td>
<td>4</td>
<td>1.1</td>
</tr>
<tr>
<td>Republic of South Africa</td>
<td>1</td>
<td>0.3</td>
</tr>
<tr>
<td>Zomba</td>
<td>12</td>
<td>3.4</td>
</tr>
<tr>
<td>Neno</td>
<td>1</td>
<td>0.3</td>
</tr>
<tr>
<td>TOTAL</td>
<td>358</td>
<td>100</td>
</tr>
</tbody>
</table>

2.5 Summary of case handling statistics

Table 4 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.
2.5 Cases carried forward

In 2013 the Commission had a number of uncompleted cases. These cases were carried over to 2014 so that investigations could be finalised. Below are cases that were carried forward from 2013, according to different Directorates.

<table>
<thead>
<tr>
<th>Directorate</th>
<th>No of complaints registered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child rights</td>
<td>35</td>
</tr>
<tr>
<td>Civil and political rights</td>
<td>9</td>
</tr>
<tr>
<td>Gender and women rights</td>
<td>20</td>
</tr>
<tr>
<td>Economic social and cultural rights</td>
<td>4</td>
</tr>
<tr>
<td>Disability and elderly rights</td>
<td>8</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>76</strong></td>
</tr>
</tbody>
</table>

Table 5 below shows 2013 cases that were carried forward to 2014 according to category of right

<table>
<thead>
<tr>
<th>Human Rights Category</th>
<th>Cases Received</th>
<th>Cases Under Investigation</th>
<th>Cases under ADR</th>
<th>Cases Under monitoring</th>
<th>Cases Under Legal Action</th>
<th>Cases resolved way of advice</th>
<th>Cases Referred</th>
<th>Resolved / Concluded through investigation/legal action/ADR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child Rights</td>
<td>35</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>4</td>
<td>0</td>
<td>5</td>
<td>21</td>
</tr>
<tr>
<td>Access to justice</td>
<td>9</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>Child Custody</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Child maintenance</td>
<td>23</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>0</td>
<td>5</td>
<td>11</td>
</tr>
<tr>
<td>Right to economic activity</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Right to property</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Right to human dignity</td>
<td>6</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Access to Justice</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Right to personal liberty</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Right to fair labour practices</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Right to family and marriage</td>
<td>13</td>
<td>8</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Right to deceased estate</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Rights unique to women</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Disability rights</td>
<td>8</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>76</strong></td>
<td><strong>24</strong></td>
<td><strong>2</strong></td>
<td><strong>7</strong></td>
<td><strong>0</strong></td>
<td><strong>7</strong></td>
<td><strong>34</strong></td>
<td></td>
</tr>
</tbody>
</table>
Chapter Three:
Civil and Political Rights

3.0 Introduction

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, such as: the right to self-determination; the right to life; the right not to be subjected to torture, cruel, inhumane or degrading treatment; the right to equality and non-discrimination; the right to privacy; the right to human dignity; the right to access to information; freedom of assembly; freedom of religion; among other rights. These rights are also enshrined in the bill of rights in chapter four of the Constitution of the Republic of Malawi.

In 2014, the Commission carried out several activities on the thematic area of civil and political rights. These included human rights monitoring; complaints handling; research; advocacy and education, the highlights of which are discussed below.

3.1 Complaints Handling

The Directorate of civil and political rights registered and handled a number of complaints of human rights violations. At the end of 2014, the Directorate had over 200 complaints under consideration. Some of these complaints require detailed legal analysis but most of them require further investigation. The ensuing paragraphs present the highlights of some of the complaints handled. The summary of all cases handled has been covered in detail in Chapter 2.

3.1.1 Reuben vs. Shishi

The complainant was an employee of the defendant, an Indian national. The defendant ordered his guard to strip search the complainant on suspicion that the complainant had stolen some items, although based on the facts of the case no goods were missing and there was no reasonable basis for suspecting that the complainant had stolen any goods. The complainant lodged a complaint with the Commission, seeking compensation for violation of the right to privacy. After comprehensive investigations on the complaint, mediation was conducted. The defendant admitted liability. Both parties agreed that the defendant should pay K300,000.00 in three installments, in final settlement of the matter. At the time of compiling the report, the defendant had paid a total of K100,000.00.

3.1.2 Mr. V vs. Sealand Investment Ltd

The complainant fell and sustained a head injury while on duty as an employee of the Respondent. His incapacity was assessed at 100%. The Workers Compensation Commissioner awarded him K500,000.00 as compensation. Dissatisfied with the award, the complainant lodged a complaint with the Commission. The Commission engaged the Workers Compensation Commissioner and later filed an appeal with the Chief Resident Magistrate against the award that was made by the Workers Compensation Commissioner. On appeal, the complainant claimed at least K2,700,000. However, before the matter was heard, negotiations took place between the Commission and lawyers for the Respondent resulting in an offer of K1,000,000.00, which the complainant opted to accept. At the time of writing the report, payment of the compensation had been made to the complainant.

3.1.3 Ms. X vs. Family Planning Association of Malawi (FPAM).

In this case a story was published by FPAM revealing the past life of a former commercial sex worker, Ms. X (the complainant). She lodged a complaint with the Commission, claiming compensation for violation of her right to privacy. The Commission successfully held mediation in which FPAM admitted liability and agreed to pay K500,000.00 as compensation to Ms. X. At the time of writing the report, FPAM had paid the compensation to the complainant.

3.1.4 Mr. T. vs. Carlsberg Malawi Limited.

The Complainant was awarded by the Industrial Relations Court (IRC), the sum of K1,812,430.00 as compensation for unfair redundancy/unfair dismissal. Carlsberg Malawi Limited obtained a stay of execution pending appeal to the High Court. The Commission represented the Complainant considering that (i) the Department of Legal Aid had indicated that it could not represent him and (ii) Carlsberg Malawi Limited was represented. The order of stay of execution was successfully challenged on the ground that the respondent’s application for appeal was statute-barred, and the Respondent paid the complainant the full compensation that was awarded to him by the IRC.

3.1.5 A vs. B

The Complainant works as a guard at Tama Security Services. He claimed that he had been beaten up by his supervisor (the Respondent), for apparently waking up his fellow guards who were sleeping on duty. It was claimed that the supervisor wanted to catch the other guards asleep. The Commission conducted mediation. It was established that the allegation that he had been beaten up by the Respondent was false. The matter was resolved amicably.

3.1.6 J vs. Limbe Leaf Tobacco Ltd.

The complainant was injured while on duty and engaged a law firm to represent him in claiming compensation before the Workers Compensation Commissioner. Due to what the complainant perceived as unjustified delays in the processing of his claim by the Workers Compensation Commissioner, the complainant lodged a complaint with THE COMMISSION. Following consultations between THE COMMISSION and the complainant’s lawyers who expressed unwillingness to continue handling the matter, THE COMMISSION took over the case. Mediations were conducted whereby the parties agreed to resolve the matter amicably. At the time of writing the report, the Complainant had undergone a medical assessment at Mwawathu Private Clinic with the support of the Respondent, and the medical report thereof will form the basis for compensation negotiations.

3.1.7 N vs Ntcheu District Assembly

The Complainant bought a piece of land from Ntcheu District Assembly. He started constructing a house. When the house was at window level (in 2009), Mr. Njehani claimed ownership of the land and obtained an injunction restraining Kamanga from proceeding with the construction. Njehani, through Department of Legal Aid, commenced an action by writ of summons claiming ownership of the land but did not take further steps to have the matter concluded. On 26/8/2013, Kamanga lodged a complaint with THE COMMISSION arguing for legal assistance. Attempts to have the matter resolved amicably failed. The Directorate filed an application to dismiss the matter for want of prosecution and on 25/7/2014 the application succeeded.

3.1.8 Maxon vs. The Attorney General.

The complainant alleged that he was interdicted in 2008 without pay by the Ministry of Education on the basis that he was answering criminal charges on allegations that he had used a fake Malawi School Certificate of Education (MSCE). The Complainant however said he was employed using his JCE certificate and had never at any material time used an MSCE certificate and that his employment records would prove this. Whilst waiting for prosecution of his case he was informed by the prosecutor that he had been convicted and sentenced to 2 years suspended sentence. He however alleged that he had never on any occasion been taken to court to take plea. He further
alleged that he had been to Legal Aid Department but had not been assisted. He therefore lodged a complaint with
THE COMMISSION seeking intervention for protection of his rights to fair labour practices, access to justice and fair
trial. At the time of writing the report, investigations into the matter were underway and summons had been filed with
the Industrial relations court to avoid the case becoming statute barred.

3.1.9 Charles Ali vs. Malawi Police Service:
The complainant alleged that he was involved in an accident involving a lorry that lost control at Dowa Turn Off
while coming from Kasungu District. He further claimed that after his release from the hospital, the police were
refusing to issue him with an accident report because they did not have his name among the victims that were
registered on the day of the accident. Following extensive investigations, it was found that the complainant was
indeed among those involved in the accident and Malawi Police Service was advised to issue him an accident
report so that he could proceed to process his accident compensation report. At the time of writing this report, the
complainant was yet to be issues with the report. Malawi Police Service had asked him to pay a sum of MK3,000 for
the report and he had not yet paid that sum.

3.1.10 X and Y vs. Malawi Police Service
Ms. X is a civil servant who had been assigned to work with THE COMMISSION on a project. On 12th September
2014, while Ms. X was at THE COMMISSION, the police and Malawi Defence Forces were conducting street clean
up campaigns. Ms. X was grabbed from within THE COMMISSION offices, beaten up and arrested by the police for
allegedly taking pictures of the police and MDF actions. Mr. Y was arrested at Mchinji Roundabout allegedly for
taking pictures of the police action. He was in a friend’s vehicle at the time of the incident. While at Lilongwe Police
Station, he was charged with rogue and vagabond. THE COMMISSION acted on the Miss X case on its own volition
while Mr. Y lodged a complaint. At the time of writing the report, the matters were undergoing investigations to
inform THE COMMISSION’s further conduct of the matter. The issue had also been referred to the Malawi Police
Service for the necessary actions, including administrative action against the police officers that manhandled the
two, if this conduct was to be found to be unlawful.

3.1.11 Lingison Kazembe vs. Office of the Vice President.
This was a case of withheld contract money. The Complainant was engaged to provide plumbing services to
the defendant at a contract sum of K120,000.00. He lodged a complaint for withheld payment. The Directorate
conducted mediation. It was agreed that he should be paid. The complainant has since been paid the money.

3.2 Facilitation of Re-sentencing Hearing Proceedings for
Death row Inmates
Following the judgment of the Constitutional Court in the case of Kafantayeni and Others vs. The Attorney General,
whereby the mandatory imposition of the death penalty was declared unconstitutional, and in the ruling of the
court in the subsequent case of Mclemonce Yasin vs. the Republic, the court ruled that all prisoners that were initially
given a mandatory death sentence should be brought back to court for a resentencing hearing. The Court ordered
“each of the plaintiffs to be brought once more before the High Court for a Judge to pass such individual sentence
on the individual offender as may be appropriate, having heard or received such evidence or submissions as may be
presented or made to the Judge in regard to the individual offender and the circumstances of the offence.”

The Court in its pronouncement clearly stated that the individualized sentencing proceedings must provide each
offender with an opportunity to present additional evidence and submissions in support of a lesser sentence – an
opportunity denied to those sentenced under the mandatory death penalty regime.

The Commission designed a project on the resentencing re-hearing which is being funded by the Tilitonse Fund.

The project is being implemented in conjunction with the Office of the Director of Public Prosecutions, the
Legal Aid Department, the Judiciary, Malawi Law Society, Faculty of Law Chancellor College, the Malawi Prison
Service, Paralegal Advisory Services and Center for Human Rights (PASi), Advocacy and Education (CHREA), and
Northwestern University, aimed at bringing the concerned prisoners to court to undergo a sentence re-hearing.
A lot of preliminary work for the resentencing project was carried out in 2014, including stakeholder engagement,
tracing of files, interviews with the prisoners, a series of training for law students, paralegals and lawyers in mitigation
investigation techniques and plea / sentence negotiation. This workshop was held at Crossroads Hotel from 26th to
28th March, 2014. The objective was to equip lawyers and paralegals with skills for effective implementation of the
project. Several mitigation interviews were also carried out, with the prisoners at the Zomba Central Prison from 25th
to 26th March, 2014, and people in the villages in which the offences were committed. It was envisaged that all this
preparatory work would lead to the actual court proceedings on the resentencing in 2015.

At the time of writing this report, re-sentence hearings had commenced in Zomba and some inmates were
immediately released following the reduction in their sentences.
Following the monitoring of the 2014 Tri-partite Elections, the Commission released its monitoring report in November 2014. The Commission monitored the pre-election phase, the election phase and even the post-election phase. This contributed to the delayed release of its monitoring findings. In its elections monitoring report, the Commission noted, among others, that the elections were characterized by administrative hiccups right from the beginning. For instance, registration of voters was characterized by shortages of staff and materials such that in most cases some people failed to register because it was taking too long for one’s registration to be processed.

The nomination of candidates saw a number court cases resulting from MEC’s rejection of some of the presidential and parliamentary candidates on account of their being public servants. These issues were settled in court and eventually all the candidates were allowed to stand.

Except for the violence that culminated in the death of two people at Goliyati in Thyolo and also localized conflicts in Karonga, the campaign had generally been peaceful. A major concern however was the continued use of state resources by the then ruling People’s Party. The polling itself was relatively orderly and peaceful in a number of areas but numerous reports of shortage of materials was reported across the country. In most cases there was shortage of ballot boxes and ballot papers. This was happening against a background of numerous media reports in the last weeks of the campaign about alleged attempts by the state machinery to rig the elections in favour of the ruling People’s Party. As a result of the growing suspicions anger by some voters led to isolated cases of violence in the major cities of Blantyre and Lilongwe. This violence was contained by the Police and Malawi Defense Force soldiers but nevertheless MEC was forced to postpone elections in some of the affected centres in the two districts to the following day.

In addition to the administrative and logistical hiccups that marred the elections, the Commission also commented on a few other relevant issues that had a bearing on the outcome of the elections and the political landscape after the elections. These included the electoral system, independence and capacity of the Malawi Electoral Commission, the role of civil society, and the general management of the transition processes from one regime to another. Having considered the magnitude of the technical and logistical challenges that marred the 2014 Tripartite Elections, the Commission concluded in its monitoring report that the elections were not free, not fair and not credible. A detailed analysis of the whole electoral process is contained in the Elections Monitoring Report (2014).

3.4. State Party Reporting

Section 14 (g) of the Human Rights Commission Act (1998) stipulates that it is the Commission’s responsibility to contribute to the development of reports that the Malawi Government submits, under its treaty obligations. The Commission is allowed to submit alternative reports whenever necessary. To this end, the Commission has worked hand in hand with the Malawi Government through the Ministry of Justice and Constitutional Affairs and other ministries in producing state party reports. These include the Universal Periodic Review and the report to the African Commission on Human and Peoples Rights. The Commission has served in national task forces that have developed reports under UPR and the ACHPR.

The Commission participated in the 111th Session of the International Human Rights Committee on the International Covenant on Civil and Political Rights (ICCPR) that took place in Geneva (Switzerland) from 7th July, 2014 to 25th July, 2014. The Commission participated in the meetings of the Committee from 7th July to 10th July when the Committee was reviewing the Initial Report submitted by the Malawi Government and the Alternative Report that had been submitted by the Commission. The Commission’s delegation at the conference comprised the Chairperson of the Commission, Ambassador Sophie Asimenye Kalinde, Commissioner Mr. Marshal Chilenga, the Executive Secretary, Mrs. Grace Malera and the Director of Civil and Political Rights, Mr. Peter Chisi.

The Malawi Government team was led by the Solicitor General Dr. Janet Banda who was accompanied by officers from the Ministry of Justice and Constitutional Affairs, Ministry of Foreign Affairs, Law Commission, Malawi Police service and the Ombudsman, the Hon Justice Tujilane Chizumila (Retired).

Malawian Civil Society was represented by the Executive Director of Centre for Human Rights and Rehabilitation, Mr. Timothy Mtambo, Executive Director for Centre for the Development of People, Mr. Gift Trapence, the Executive Director of the Malawi Law Society, Ms. Felisa Kilembe and Mr. Chrispine Sibande from IPAS.

Malawian legal experts were represented by Mr. Malikamusi Kamwena, Deputy Director of the Malawi Law Society and Mr. Prosper Mchumvi from the Law Institute of Malawi. Malawian legal experts working in various international organizations were also represented by Mr. Rabbi Banda from the ICCPR Network and Dr. Joseph Sichone from the International Human Rights Law Centre.

The Commission’s alternative report to the UN among others touched on, the historical background to ICCPR in Malawi, the current legal framework on domestication of ICCPR, the application of ICCPR in Malawi, issues of non-discrimination and equality between men and women in Malawi, domestic violence, right to life, use of lethal force by the Malawi Police Service, poor conditions of detention, challenges in relation to access to justice and right to a fair trial, HIV and AIDS, the rights to liberty and security of the person and freedom of expression and freedom of association and assembly.

Essentially, the Commission’s alternative report highlighted the following issues:

a) notwithstanding the lack of domestication of the ICCPR, Malawi has a relatively strong normative framework where civil and political rights are concerned, particularly since the rights are expressly guaranteed in the Constitution;

b) various challenges stand in the way of the effective realization of the rights both at the level of the law and in practice;

c) Malawi still maintains laws that encroach on Civil and Political Rights, such as the Citizenship Act, which discriminates against women with respect to acquisition of citizenship for their spouses through marriage;

d) the proposed HIV and AIDS (Prevention and Management) Bill has some sections that affect the human rights to equality and privacy;

e) where the legal safeguards for civil and political rights exist, their effective implementation is hampered by a number of structural challenges such as: infrastructure, capacity in terms of inadequate human and material resources and limited political will; and

f) in May, 2014, Malawi conducted Tripartite Elections and a new Government led by Professor Peter Arthur Mutharika under the Democratic Progressive Party (DPP), was ushered in. In line with the DPP manifesto and the inaugural state of the nation address delivered by the President, Government has made strong commitments on human rights protection and promotion.
The State Party Report which Government submitted noted that since Malawi acceded to the ICCPR Treaty in 1993, it took a while before the country could submit its first report. However Government was optimistic that the country’s engagement with the Human Rights Committee would continue to improve. Government pointed out that the process of developing the country’s Initial Report was consultative, involving various government ministries, Malawi Human Rights Commission and civil society organisations, through a National Task Force that was responsible for steering the whole process. The report alluded to general comments on human rights developments in Malawi, touching on the 2014 Tripartite Elections that had been successfully conducted, among other things.

The report further pointed out that Malawi had made some strides in areas of women’s rights, disability rights, children’s rights etc. Further that, the Penal Code was under review by a Special Law Commission and that the process would also touch on the issue of minority rights, pointing out that so far, Government allowed a healthy debate on the issue. The report further pointed out that Malawi had passed a Gender Equality Act in 2013 while a Special law Commission on abortion law was in place. Since the ill-fated 2011 demonstrations, the country had registered improvements in managing mass protests and demonstrations.

Members of the Human Rights Committee commended the Malawi Government for submission of the report and also for appearing to engage with the Committee on the issues raised. At the end of the review, the Committee submitted its Concluding Observations to the Malawi Government. Among others, Concluding Observations touched on the issue of Extra-judicial killings, continued application of the Death penalty, issues of Female Genital Mutilation – FGM, Widow cleansing, Gender based violence and human trafficking, Religious freedom, Child Labour, Access to information Bill, Prison conditions and independence of the Malawi Human Rights Commission.

### 3.5 Education, Information and Training Activities

**Section 13 of the Human Rights Commission Act gives the Commission the function of carrying out human rights education, as well as being the source of human rights information for the people of Malawi. In line with this function, the Directorate of Civil and Political Rights carried out several human rights education, information dissemination and training activities as highlighted in the ensuing paragraphs.**

**3.5.1 Capacity Building for Selected Duty Bearers on Human Rights and Rights Based Approaches**

The Malawi Human Rights Commission implemented a project on Good Governance for Development: Capacity Building of Selected Duty Bearers on Human Rights and Rights Based Approaches. The project was implemented with financial support from Irish Aid. The project was implemented from January 2014 to August 2014.

The main objective of the project was to increase the capacity of law enforcement officers and lawyers to implement rights based approaches and enhance respect for human rights and fundamental freedoms. One core component of the project was the revival of the pro bono public interest litigation scheme. Another core component was the revision of the Police Training Manual on Human Rights. The Commission has undertaken activities under both components.

The Commission conducted two capacity building conferences for lawyers. The first was conducted on 27th February, 2014 and the second one on 28th August 2014.

**3.5.2 Pro bono legal representation scheme**

In 2005, the Malawi Human Rights Commission (the Commission) and the Malawi Law Society (MLS), entered into a Memorandum of Understanding to run a Pro bono Litigation Programme. Under the programme, members of MLS register with the Commission to assist with provision of legal services, particularly legal representation to the Commission’s complainants on pro bono basis. The programme has been supported with funding from UNDP. To compliment this effort, Irish Aid provided funds for the training of the lawyers in order to enhance their knowledge and skills gap with respect to human rights litigation.

The Commission has recently taken a new strategic direction in relation to the pro bono litigation programme whereby, efforts are now directed more towards public interest litigation cases, as opposed to individual cases. This change of direction is driven by the interest on the part of the Commission to use its comparative advantage of the ability to take up legal actions on issues relating to human rights. In this way, through the pro bono
The objectives of the workshop were the following:
(a) to understand the role of the Malawi Human Rights Commission with respect to public interest litigation;
(b) to understand the relevance and role of public interest litigation in the promotion and protection of human rights;
(c) to understand the importance of applying provisions of international human rights instruments in public interest litigation;
(d) to examine the limits of public interest litigation;
(e) to identify potential areas for public interest litigation; and,
(f) to examine the progress and challenges facing the pro bono litigation programme.

The workshop drew participants from THE COMMISSION and the Malawi Law Society (Lawyers). It was facilitated by THE COMMISSION and Justice Dr. Redson Kapindu.

3.5.3 Review of the Police Training Manual on Human Rights

The Malawi Human Rights Commission embarked on a process to review and update the police training manual on Human Rights. This review was motivated by the understanding that over the 10 years that the manual had been in use, there had been a number of changes in the legal framework governing human rights in Malawi. Some relevant laws had been amended and new ones enacted. Police work has now expanded into new areas such as issues of human trafficking, public health emergencies and refugees. These issues were not given attention in the original training manual. The Commission further noted that there were challenges in the manual with respect to nomenclature, for example, the manual used language that is no longer acceptable such as the term “Juveniles” which has now been changed to “Children in Conflict with the law”. More notable, even the Police Act itself was recently amended in 2012 and there was need to align the manual with the relevant applicable laws.

The project assembled a team of experts from the Malawi Human Rights Commission and the Malawi Police Service and constituted a Steering Committee. The Steering Committee also came up with a smaller group that served as a Task Force. These two structures played a frontline role in identifying gaps and areas for revision in the training manual. The Steering Committee and Task Force reviewed the manual and came up with some key recommendations. This was done following two consultative meetings by the Steering Committee held on 19th to 20th March 2014 and 12th to 13th June 2014. In order to ensure that the recommendations were shared with key stakeholders and to get further input, THE COMMISSION and the Malawi Police Service organized regional consultative meetings for police officers from all districts in Malawi. The consultation meetings targeted Officers In Charge, Station Officers and Head of relevant sections such as Community Policing, Investigations, prosecution and Victim Support Unit. Stakeholder meetings were concurrently conducted in all the four regions in Mzuzu, Lilongwe, Blantyre and Zomba.

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The Inspector General of Police and THE COMMISSION: Commissioners and staff pose for a group photograph during the final validation meeting in Lilongwe (Above), The Honourable Minister Launching the Manual.
Chapter Four: Civil and Political Rights

4.0 Introduction

The year 2014 marked the 25th anniversary of the Convention on the Rights of the Child (CRC) which is the most rapidly and widely ratified international human rights treaty in history. The unprecedented acceptance of the Convention clearly shows a wide global commitment to advancing children’s rights. Malawi ratified the CRC in 1991 and the African Charter on the Rights and Welfare of the Child (ACRWC), the African version of the CRC, in 1999. Over the years, there has been significant progress in the promotion and protection of children’s rights in Malawi. Improvements have been noted in the legal framework such as the amendment of the Republic of Malawi Constitution (the Constitution), including section 23 on children’s rights; the enactment of the Child Care, Protection and Justice Act, 2010 and other pieces of legislation as well as the drafting of various guidelines and regulations to strengthen the implementation and enforcement of the legal framework protecting children.

Malawi has also made efforts to establish and strengthen the child protection system at national, district and community level so as to create a Malawi fit for children. Despite a fairly strong legal and policy framework, children in Malawi continue to face challenges to enjoy their rights and full protection of the law. Therefore, this calls for concerted efforts between Government and Non State Actors to ensure that children fully enjoy their rights. Against this background, the Commission implemented a number of activities in 2014, aimed at promoting and protecting the rights of children as discussed in this chapter.

4.1 Complaints Handling

Pursuant to its mandate as provided in the Constitution and the Human Rights Commission Act to investigate human rights violations and provide appropriate redress, the Commission recorded cases of children’s rights violations. While some cases were handled through investigations, mediation and litigation, others were referred to other appropriate institutions for redress. Further, appropriate recommendations on specific cases were also made to relevant authorities for redress. The following are the highlights of cases of children’s rights violations handled by the Commission.

4.1.1 Ms A vs. Mpherembe Police Unit

The Commission received a complaint from Ms. A on behalf of child X against Mpherembe Police Unit in Mzimba district. The complainant stated that her sister’s 11 year old daughter was sexually assaulted on 4 different occasions by Mr. Y at Mpherembe Trading Centre in Mzimba district. The matter was reported to Mpherembe Police Unit, Mr. Y was arrested and the trial began at Mpherembe Magistrate Court. The case however stalled. It was further alleged that the Police failed to provide concrete position of the case and the complainant later heard that the accused person had been released on bail.

The Commission investigated the matter and established that the allegations were true. It was established that the matter was transferred to the Mzuzu Magistrate Court and that Kafukule Police had finished prosecuting the accused person. It was, however, noted that the Police transferred the accused person from Mzuzu to Mzimba Prison as a remandee for no justifiable reasons where he was later released by the Mzimba Magistrate Court. Following the findings, the Commission engaged Kafukule Police to re-arrest the accused person who, upon his arrest, was convicted by the Mzuzu Magistrate Court to 6 years imprisonment.

4.1.2 In the case of the Republic vs. Mr. X (Criminal case no 264 of 2014)

In June 2014, it was reported in the media that Mr. X from Balaka district had abducted six girls under the age of 16 years. It was reported that Mr. X had taken the girls into his custody Mr. X had been sexually abusing the girls until he was arrested in early June 2014. The Police arrested Mr. X and prosecuted him. He was charged with two counts of defilement contrary to section 138 (1) of the Penal Code.

The Commission joined the litigation of this case as Amicus Curiae (friends of the court) in order to advance to the court the human rights implications of the matter. The court convicted and sentenced Mr. X to concurrent custodial sentences of 42 months and 36 months. The Commission was, however, concerned with the leniency of the sentences and referred the matter to the Director of the Public Prosecutions (DPP) to look into the case and consider initiating review or taking any other appropriate action to ensure a stiffer sentence. At the time of publishing this report, the DPP was yet to consider the matter.

4.1.3 Ms. A (for child X) vs. Lilongwe Police

Ms A complained that her 8 year old daughter was allegedly defiled by a boy who was later identified to be 14 years old. The complainant claimed that the matter was reported to Chitedze Police Unit after which the suspect was arrested and later released on Police bail. The complainant alleged that the matter stalled and after several follow ups with the Police, she was informed the case had been transferred to Lilongwe Police. However, it was alleged that progress of the case still stalled at the Lilongwe Police, thereby denying the complainant’s right to access justice.

The Commission investigated the matter and engaged Lilongwe Police to expedite the process of prosecuting the suspect in the interest of justice. The suspect was subsequently prosecuted. He was convicted and placed under the supervision of the Probation Officer.

4.1.4 In the matter of Mr. A vs. Chief X

The complainant alleged that 8 children of his 2 pastors of Disciple Pentecost Church in Chitipa district were expelled from Nasato Primary School in the district because of their (pastors) refusal to participate in development work. It was further alleged that the pastors were living in fear in the communities following threats from the traditional leaders for the former’s failure to participate in development work. The complainant claimed that the Chitipa District Education office did not intervene in the issue of expelling children from school by traditional leaders and that the Chitipa District Council never took action on the whole matter despite the case being reported to such offices. The complainant asked for the Commission’s intervention in order for the children to be re-enrolled in school and for the concerned pastors to live at peace with the traditional leaders in the communities they were deployed to serve.

Following the Commission’s investigations, it was noted that a total of 11 children belonging to the three pastors of the church who were serving in two different villages were expelled from two schools by traditional leaders. It was further noted that there was a huge animosity between traditional leaders and the pastors over the latter’s lack of participation in development work in the area. This animosity led to two of the pastors to run away from the villages with their families for safety and this affected the children’s right to education. It was further noted that the pastors were not participating in development work because of their position that pastoral work is a developmental activity on its own.

The Commission mediated the matter by involving the complainant and the concerned pastors, all the concerned traditional leaders, the District Education office, the District Social Welfare office and the Chitipa District Council. The outcome of the mediation was that the pastors who had fled to other areas should return to the communities they were deployed to serve and that all the 11 children who had been unilaterally expelled from the school should be re-enrolled. Both parties were enlightened on the role of the church and the society in development work. It was, therefore, resolved that the pastors and the traditional leaders as well as the communities in general should start working together in development work.
4.2 Human Rights Monitoring and Research

4.2.1 Child Rights Situational Analysis in Malawi

The Commission participated in the child rights situational analysis commissioned by its partner, Save the Children Malawi. The study aimed at understanding the existing situation of children’s rights in Malawi in accordance with the CRC and other international and regional human rights instruments as regards the enablers of the realization of children’s rights and challenges that impede full enjoyment of such rights. The study, whose report is yet to be disseminated, is expected to provide a broader picture regarding where Malawi is on issues of children’s rights, identify the capacities of institutions working in the area of children’s rights, identify where and how best to contribute to the achievement of children’s rights in Malawi and inform future programming.

4.2.2 Dissemination of 2013 Child Care Institutions monitoring and mapping reports

In 2013, the Commission embarked on a mapping exercise to establish the total number of CCIs operating in Malawi to ensure that they operate in line with the legal framework guiding the operations of such institutions. The monitoring exercise was also expected to provide Government with accurate information on the number of CCIs, number of children in the CCIs and the quality of care being provided by the CCIs.

Following these exercises, the Commission disseminated the findings of the monitoring and mapping exercise of CCIs that was conducted in 2013. The dissemination provided a forum to discuss the situation of children in the CCIs and enhance the role of Government at central level, District Social Welfare Officers, CCI operators and other relevant stakeholders in ensuring the protection of children in alternative care. The findings will further help Government to step up its role of supervising the CCIs so that they operate within the provisions of the relevant laws and set standards.

4.2.3 Monitoring of child care institutions in Malawi

In 2014 the Commission, in collaboration with the Ministry of Gender, Children, Social Welfare and Disability as well as Child Better Care Network, undertook a follow up monitoring visit to CCIs across the country including schools of special needs to see how far the recommendations made during the 2013 monitoring exercised were being implemented.

A total of 175 institutions were monitored and it was noted that 122 CCIs were operating as orphanages; 21 were operating as schools for children with special needs; 2 were reformatory centres run by government; 4 were shelters and 1 public rehabilitation Centre. The monitoring exercise established that the situation has remained the same with very minor improvements in areas such as formation of management committees. It was noted that most children are admitted directly from the communities without the involvement of Government although there is an improvement in the old institutions that have been working closely with the District Social Welfare Offices. It was further noted that most institutions operate without being registered by Government. It was also noted that there are inefficient monitoring mechanisms by DSWOs with regard to admissions, critical illnesses, deaths and general supervision. It was further noted that although some CCIs have been failing to meet the standards to operate over a period of time, they continue to operate and Government has overly been slow to take appropriate action on such institutions.

Other findings were that in most institutions, there are poor standards in terms of general sanitation. Further, it was established that children in 83 institutions are not allowed to practice their religion. In such institutions, children are made to follow the religion of proprietors of the respective institutions and this compromises the right to religion. In this regard, the Commission continues to engage the CCIs by providing appropriate recommendations for them to improve for the better. Further, in the recent years, the Commission has continuously worked closely with the Ministry of Gender, Children, Social Welfare and Disability in order to improve the situation of children under institutional care.

4.2.4 Monitoring of children living with foster families in Blantyre

The Commission supported the Blantyre Social Welfare Office to carry out a monitoring exercise on foster families who are taking care of foster children in the districts. The exercise was aimed at assessing the quality of care and support being provided to foster children in the foster families and to promote stronger linkage amongst Social Welfare Offices, the foster parents, foster children and biological parents or guardians of the children. A total of 24 families that are taking care of a total of 27 foster children were visited. Among other findings, it was noted that while most of the children were put under fosterage after proper procedures were followed, some children were fostered without following proper procedures. The Social Welfare Office has since taken up the task to formalize the placement.

It was further noted that 20 children had stayed under fosterage for as long as 17 years. However, the Child Care, Protection and Justice Act, 2010 provides that foster care should not exceed 5 years and that it can be extended upon agreement between District Social Welfare Officer and foster parents, which was not the case with the families that were found in this situation. It was further noted that while section 61 of the Child Care, Protection and Justice Act, 2010 (CCPJA) empowers a District Social Welfare Officer to visit the foster families once every three months to assess the child’s welfare and provide proper guidance on child growth and development, foster parents were visited once during placements. It was further established that in cases where foster parents died, the relations of the deceased foster parents took over the responsibility of caring for the foster children. This is against CCPJA which provides that foster children must be withdrawn when a foster parent has died or that the surviving relations should formalize foster care. On the other hand, the Commission noted that the children are generally looked after quite well and that they are sent to school. The Commission is working with the DSWO in strengthening child monitoring systems at the district level.

4.2.5 Child Case Review Board meetings and monitoring of children in prisons

The Commission, as a member institution of the Child Case Review Board (CCRB), participated in the monitoring of prisons to check the presence of children and their condition. The monitoring was premised on the notion that there is a potential that some children in conflict with the law end up in prisons once their cases are concluded in the court of law other than sending them to young offenders prisons or reformatory centres depending on their age. At the time of the monitoring in 2014, there were 147 children aged 14 to 17 in the prisons. It was also established that there were a total of 13 children accompanying their mothers in prisons.
The exercise targeted all the prisons in the northern region; Salima, Nkhotakota, Dedza, Machinga, Kasungu, Maula, Kachere and Byanzi in the central region and Chikhwawa, Zomba, Chichiri, Mulanje in the southern region. Based on the findings, the CCRB resolved to review the cases of the children in conflict with the law that were found in the prisons in order to provide appropriate determinations that would see the children being sent to appropriate places of detention based on their age for reformation. The CCRB also resolved to make appropriate assessments on how best to handle cases where children accompany their mothers in prisons.

Furthermore, the Commission continued to participate in the meetings of the CCRB to deliberate on issues of children on how best to promote and protect their rights. As such, the Commission presented its report of mapping and monitoring child care institutions to the CCRB. This was aimed at providing the board with a broader picture of the situation of children under institutional care in Malawi and seek appropriate advice as the board has the duty to consult with and advise on the administrators of reformatory centres, safety homes and foster homes and to undertake visits and to monitor reformatory centres, safety homes and foster homes to ensure compliance with the CCPJA.

4.2.6 Follow-up of Police Prosecutors and Social Welfare Officers in the implementation of the Child Care, Protection and Justice Act, 2010

Over the years, the Commission has trained a number of Police Prosecutors, Magistrates and Social Welfare Officers in different cohorts in Child Justice Core Competencies with a focus on the Child Care, Protection and Justice Act, 2010 (CCPJA). In view of this, the Commission embarked on a follow up exercise to appreciate the extent to which the beneficiaries of the training programme have been using the knowledge and skills to implement and enforce the CCPJA. The expectation was that the follow up would provide insight on the impact of the programme and inform how best to address the gaps for the initiative to be much more meaningful.

The monitoring exercise, which involved a series of engagement meetings with Police Prosecutors, Magistrates and Social Welfare Officer revealed the successes and challenges which would inform how best to support the beneficiaries of the programme. It was noted that while progress has been recorded to ensure that the CCPJA is fully implemented and enforced, there is still need to do more to ensure that children enjoy the full protection of the law. The monitoring exercise, which was conducted jointly with the Prosecutions Department of the Malawi Police Service, targeted Police Prosecutors, Magistrates and Social Welfare Officers from Phalombe, Blantyre, Zomba, Lilongwe and Mchinji districts as well as Mzuzu. Based on the weaknesses that were identified, the Commission is expected to work jointly with the relevant stakeholders to address the gaps that continue to exist.

4.3 State Party Reporting


The Commission actively participated in the compilation of State Party reports on the CRC and the ACRWC. The Malawi Government submitted the report on the CRC to the UN Committee on the Rights of the Child. However, at the time this report was being compiled, Government was yet to submit a report to the African Committee of Experts on the Rights Children at the African Union level.

4.3.2 Support the preparation of shadow reports on the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of Children

In a bid to strengthen collaboration with CSOs in the area of state party reporting, the Commission provided technical support to an NGO the Coalition on Child Rights in the preparation of shadow reports on CRC and its optional protocols and the African Charter on the Rights and the Welfare of Children to the United Nations (UN) Committee of Experts on the Rights Children at the African Union level.

4.4 Education, Information and Training Activities

Pursuant to its mandate provided under the Human Rights Commission Act (Cap 3:08 of the Laws of Malawi), the Commission implemented a number of activities aimed at promoting the rights of children. As indicated, this was in line with the mandate of the Commission to act as a source of information for human rights. The activities aimed at raising awareness on children’s rights and their attendant responsibilities as well as the role of duty bearers in the promotion and protection of such rights.

4.4.1 Training of Duty Bearers and Stakeholders on Child Protection

4.4.1.1 Training of Head Teachers on Human Rights and Democracy

From 2010, the Commission in conjunction with the Malawi Institute of Education (MIE) has been implementing a programme that aims at equipping head teachers with knowledge and skills in human rights and democracy in schools. In the period under review, the Commission, with funding from the United Nations Development Programme (UNDP), continued to implement the programme. The aim 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 mainstreaming of issues of HIV/AIDS, gender, drug and substance abuse, conflict resolution, environment and sustainable development in primary schools.

So far a total of 947 head teachers have been trained and 272 head teachers were trained in 2014. Following the training, the head teachers drew up action plans for implementation in their respective schools to ensure that the programme improves the situation of children in schools.
4.4.1.2 Training of Social Welfare Officers in Child Justice Core Competencies

A total of 36 Social Welfare Officers were trained in Child Justice Core Competencies in 2014. The training focused on the Child Care, Protection and Justice Act, 2010 which is an essential legislative tool for the promotion and protection of the rights of children in Malawi. As the overall purpose, the training largely aimed at equipping the participants with the core competencies they need to effectively implement the provisions of the piece of legislation. The expectation was that the duty bearers would gain practical knowledge on how to promote and protect the rights of children using the law. The participants were drawn from the following districts: Zomba, Phalombe, Machinga, Mangochi, Balaka, Karonga, Chitipa, Mzimba, Nkhata-Bay, Mzuzu, Ntchisi, Chikhwawa, Machinga, Mzimba, Mchinji, Salima, Lilongwe, Nkhotakota, Blantyre, Lilongwe, Nkhotakota, Blantyre, Nsanzani and Ntcheu.

4.4.1.3 Training of Community Child Protection Workers in Child Justice Core Competencies

In order to contribute towards strengthening of child protection systems at community level, the Commission trained Community Child Protection Workers (CCPWs) in Child Justice Core Competencies with a focus on Child Care Protection and Justice Act, 2010 and other related pieces of legislation that protect children. The main aim was to build the capacity of the CCPWs in preventing, identifying and responding to cases of various forms of child abuse in line with relevant laws. A total of 70 Child Protection Workers from Mchinji, Ntchisi and Ntcheu districts were trained. The Commission expects the trained officers to contribute in the fight against various forms of child abuse in communities some of which go unreported.

4.4.1.4 Training of stakeholders on violence against children

In partnership with Save the Children Malawi, the Commission is implementing a project on strengthening community child protection systems to fight violence against children in Ntchisi and Balaka districts. The project aims at ensuring that local child protection systems in the targeted districts are able to prevent, detect and respond to all forms of violence including exploitation, corporal punishment, and neglect of children, among others. As part of the implementation of the project, the Commission, in conjunction with other implementing partners namely Ntchisi Organization for Youth and Development, trained a total of 24 participants in Ntchisi drawn from the district Police station and all its units, health officials from all health centres in the district, the magistrates from all the courts in the district and the Social Welfare Officers.

In Balaka, the training was conducted in conjunction with Chinanssi Foundation and drew a total of 34 participants from the district Police station, the Magistrate Court, District Education office, District Labour office, Community Development office, Balaka District Council, health workers from Balaka District Hospital, World Vision, Women Legal Resource Centre (WOLREC), Youth Net and Counselling (YONECO) and Prison Fellowship. The trainings aimed at equipping various duty bearers with knowledge in child rights and child protection and how they can identify, prevent and respond to child rights violations.

4.4.1.5 Interface Discussion with District Commissioners on Child Protection Issues

The Commission held a discussion with District Commissioners (DCs) from Chitipa, Mzimba, Rumphi, Dowa, Ntchisi, Kasungu, Mangochi, Machinga, Balaka, Mchinji, Chikhwawa and Blantyre districts on child protection. The discussion aimed at raising awareness on children’s rights in the country as well as to build their capacity on their roles regarding how they can improve the situation of children in their respective districts using the relevant legal provisions. It was expected that the DCs would take a leading role to champion issues of children in order to safeguard the rights of the latter. This would ultimately improve child rights governance at local assemblies. This was in line with section 70 to 77 of the Child Care, Protection and Justice Act, 2010 which mandates local government authorities to safeguard and promote the welfare of children.

4.4.1.6 Interface discussion with Traditional leaders in Mangochi on Child Marriages

With funding from Plan Malawi, the Commission conducted an interface discussion with traditional leaders from Mangochi district and the focus was on child marriages. The meeting involved all senior chiefs, traditional authorities and 22 Group Village Headmen from the district. The aims of the meeting were to discuss the negative impact of child marriages and develop strategies that chiefs could adopt to fight against the practice in their respective communities. Some of the strategies agreed at the meeting included keeping girls and boys in schools; developing
by-laws that punishes parents or guardians who allow their children to get married and holding frequent sensitization meetings as part of advocacy against child marriages. It was expected that the traditional leaders would begin to take a leading role in dealing with the problem of child marriage in the areas of their jurisdiction.

4.4.1.7 Interface discussion with other case handling institutions

The Commission works with a number of key and strategic stakeholders in the area of complaints handling on children's rights violations as well as violations of other thematic areas of human rights. Pursuant to its investigative function as provided by the Constitution of the Republic of Malawi, the Commission held an interface discussion with complainants handling institutions. The discussion targeted 37 officers who included District Social Welfare Officers, District Labour Officers, District Police Station Officers from all the districts in the central region as well as a Child Justice magistrate from Lilongwe Magistrate Court. This was in cognizance of the fact that the Commission handles complaint of children's rights violations, hence the need for cooperation among various stakeholders in the justice system.

The discussion focused on how to strengthen the level of engagement with stakeholders to ensure strong linkage in complaints handling and referrals. It provided a forum to share experiences, best practices, challenges and how best to map the way forward in terms of strengthening the linkages. The discussion was held against the background that in most cases, the Commission and the complaints handling institutions have not fully and collectively galvanized their efforts for the common aim of expeditiously and objectively dealing with cases of human rights violations. In some cases, the institutions have not fully appreciated the role of the Commission in investigating cases of human rights violations. The institutions have also sometimes left responsibility to others and not fully resolve cases. Following the discussion, resolutions were adopted which included improving referral and feedback system in cases of human rights violations.

4.4.1.8 Sensitization of Young Offenders on children's rights

The Commission, in conjunction with the Malawi Prison Service, embarked on awareness campaigns in Byanzi and Kachere reformatory centres in Dowa and Lilongwe districts. The main objective was to sensitize children who are in conflict with the law and are in centres on their rights and responsibilities. The campaign reached out to a total of 309 inmates.

4.4.1.9 Sensitisation Meetings on the Promotion and Protection of Children’s Rights

The Commission conducted a number of sensitization meetings on the rights of children with traditional leaders, community policing fora and other stakeholders in Dedza, Mchinji, Lilongwe, Chikwawa, Mulanje, Machinga and Mangochi districts. These meetings targeted rural communities who in most cases do not have much access to information. The primary aim was to raise awareness on the extent of the problem of child abuse and call for concerted efforts in child protection. The meetings were also aimed at empowering communities to prevent, identify and respond to various forms of child abuse. Further, the meetings focused on how children’s rights violations can be reported to Police and other appropriate authorities for redress. The expectation was that traditional leaders and other stakeholders would strengthen their working relationship with the Police and other authorities in dealing with issues of children’s rights violations.

The meetings, which were jointly conducted with the Malawi Police Service and Social Welfare officers, reached a total of 59 Group Village Headmen, 24 District Child Protection and Justice Committees members as well as 7,551 people from various communities in the targeted districts.

4.4.1.10 National Symposium on Alternative Care

As a member of the Child Better Care Network (BCN), the Commission was part of the national symposium on alternative care organised by BCN. The symposium was aimed at raising awareness to a cross section of stakeholders including Government on the situation of children under alternative care and the role such players have towards the welfare of children under institutional care. The symposium provided a forum to share best practices on alternative care systems in Malawi with a view to enforce minimum standards for providing care to children in alternative care.

Further, the symposium identified issues of weaknesses on the part of Government and Child Care Institutions (CCI). Among others, it was noted that most CCIs operate without being registered; they lack individual care plans for children and that there is lack of community involvement in the running of the institutions as well as poor sanitation standards. A series of evidence-based presentations on the situation of children under institutional care were made. The expectation was that Government would take a leading role to ensure that the institutions operate according to law and that it takes appropriate action on institutions that fail to comply with the legal requirements in their operations.

4.4.1.11 Capacity Building of Community Groups

The Commission strives to foster linkages with networks of various community groups which include Community Based Organisations (CBOs) that work towards the promotion and protection of the rights of children. In the period under review, a total of 4 trainings were conducted to equip community groups with vital knowledge and skills in the promotion and protection of children’s rights. Among others, the trainings focused on relevant provisions on children’s rights as provided under the Republic of Malawi Constitution; the Child Care, Protection and Justice Act, 2010 and how these legal instruments can be enforced to protect children.
The training provided a platform to assess the strengths of the CBOs and challenges they meet in handling complaints of children's rights violations. The groups were empowered to train other community groups and independently undertake community sensitisation in their areas. The groups were also empowered to report and seek remedies from relevant institutions on cases of children's rights violations. In this way, the community groups were capacitated to tackle various human rights issues that emerge in their respective communities. The ultimate expectation was that the knowledge and skills would go a long way to enhance the capacity of the groups at grassroots level to promote and protect the rights of children. The Commission targeted CBOs from Chikwawa, Dedza and Lilongwe districts and a total of 136 members were trained.

Further, an ongoing monitoring exercise was carried out to assess how the community groups apply the skills and knowledge gained. The monitoring exercise offered the Commission an opportunity to evaluate progress on the activities which the groups planned to implement based on their work plan. This was crucial as it helped the Commission to identify gaps in areas where the groups encountered challenges in order to inform future programming. Apart from the trainings, the Commission also worked closely with other 21 CBOs from Lilongwe and 3 CBOs from Chikwawa districts on issues of child protection. Among others, the CBOs included Chizimbi, Limuzu, Maseledo, Msozi youth and rural library, urban ministry for the youth, Kailolo, Wanzako, Masula, Mazengera, Njewa, Tsabango, Kalumbu, Mtema, Kabudula, Malili, Chitukula, Chiseka, Khongoni, Chitekwere, Chisangalalo, Chadza and Chimbutu.

4.4.1.12 Sharing best practices on child rights promotion and protection

The Commission attended the Regional National Human Rights institutions (NHRIs) forum on violence against children that was organized by Plan Region of Eastern and Southern Africa (RESA) office from 25th to 27th March, 2014, in Nairobi Kenya where it shared best practices on effectively establishing a specific child rights directorate within the NHRIs. NHRI like the Malawi Human Rights Commission has effectively integrated UN Committee on the Rights of the Child (CRC)’s General Comment No. 2 of 2002 in its operations. The Comment which is on the “role of independent national human rights institutions in the promotion and protection of the rights of the child” recommends that NHRIs should prioritise and play a more critical role in the promotion and protection of child rights given the high vulnerability of children to human rights violations and their inability to speak for themselves.

The comment lays out the guidelines for mainstreaming promotion and protection of children rights in the NHRIs and recommends remedies for breach of children rights as well as broad activities that the NHRIs can carry out within their mandate. From 30th to 31st October 2014, the Commission also made a similar presentation during a training workshop for Commissioners of the Mozambique National Human Rights Commission on the establishment of the Children Rights Unit/ Department under the Secretariat of their Commission at Bilene in Mozambique.

4.4.2 Child Rights in Schools

As part of creating child friendly schools that embrace principles of human rights and democracy and promote children’s participation, the Commission is working on a project on children’s participation in decision making in 13 schools of Njewa Education Zone in Lilongwe Rural West Education district. The project targets learners, teachers, school committees, Parents-Teacher Associations and mother groups. The following are the ongoing activities which the Commission implemented in the project.

a) Training of a total of 167 teachers which included the Head teachers from all the 13 targeted schools which comprise 11 primary schools and 2 secondary schools on children's rights and the role of teachers in the promotion and protection of such rights in schools. The training also centred on how teachers can create space for learners to participate in decision making on matters that affect them in school context.

b) Training of 120 learners who are members of the Student Councils in 13 schools in Njewa Education Zone on the rights of children and their corresponding responsibilities and how they can participate on matters that affect them in school. The expectation is that this will help develop the spirit of openness and dialogue between learners and teachers and make the former participate in decision making on issues that affect them in school.

c) The Commission had a radio programme under the theme: “Realization of Children’s Rights in Schools: the Impact of Students’ Councils.” The main objective of the radio programme was to affirm to the public on the possibility of realization of children’s rights to participation in school governance when children are fully empowered. It was expected that the programme would raise public awareness on the success stories Students’ Councils from schools of Njewa Education Zone have achieved through learners’ participation in decision making on matters that affect them. The programme also acted as an avenue for learners to share strategies on how meaningful realization of their rights in school can be achieved through their participation. The programme, which was broadcast on Zodiak Broadcasting Station.

d) Training of 13 School Management Committees, 13 mother groups and 13 Parent-Teacher Association because of the role they play in the management of schools. These groups were targeted on children’s rights as they apply in homes, communities and schools and how to promote and protect such rights in such settings and how they can use their role in the management of schools to advance the rights of children in school context.

The Commission also trained 1,076 learners at Tsabango II Primary School in Lilongwe Rural East Education District. A total of 391 learners from 8 primary schools in Mulanje district namely Lauderdale, Chingoli, Chigonjetso, Samson, Misyani, Chikhwaza, Satemwa and Njedza primary schools were trained on child rights and child protection. The aim of the training was to raise awareness on children’s rights and responsibilities and how learners can seek remedies on violations relating to their rights. The expectation was that learners would be empowered to identify, prevent, report violation of their rights.

4.5 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 held several lobbying meetings with various duty bearers for the enactment of the Bill as follows.

4.5.1 Advocacy on the Enactment of the Trafficking in Persons Bill

4.5.1.1 Lobbying with Parliament

The Commission conducted lobbying meetings with parliamentary committees in order to advocate for the speedy enactment of the Trafficking in Persons Bill taking into account that currently, Malawi has no comprehensive law to adequately deal with human trafficking which largely affects women and children. The meetings were held with Committees on Defence and Security, Legal Affairs, Social and Community Affairs, Women Caucus, Chief Whips and Deputy Chief Whips. The series of the meetings were attended by a total of 129 participants that included 72
Members of Parliament. The meetings provided room to sensitize the committees on the situation of trafficking in Malawi and the significance of expeditiously passing the Bill in parliament. The Committees committed to support the Bill once it is brought before parliament. Other lobbying meetings were made with the Ministry of Home Affairs and the Cabinet. The Commission continues with its resolve to ensure that child friendly laws are put in place in order to protect the rights of children.

4.5.1.2 Support meetings of Malawi Network against Child Trafficking

As part of building networks in such advocacy campaigns, the Commission worked closely with the Malawi Network against Child Trafficking (M-NACT) and the Better Care Network in refining the Advocacy and Communication strategy that is instrumental in the advocacy campaigns for the enactment of Trafficking in Persons Bill. To this effect, the Commission supported two meetings of the M-NACT as part of the advocacy for the enactment of the Bill.

4.5.2 Advocacy on the Adoption of Children Bill

The Commission continued to consistently engage the Ministry of Gender, Children, Social Welfare and Disability on the speedy enactment of the revised Adoption of Children Act (cap 26:01 of the Laws of Malawi). The Commission called upon the ministry to prioritize the process that will lead to the enactment of the Bill into law taking into account the challenges Malawi continue to face with respect to adoption of children, especially in the areas of inter-country adoption and the negative implications for the rights of children.

4.5.3 Advocacy on the Optional Protocol on the Convention on the Rights of the Child on a Communication Procedure


The instrument compliments existing international, regional, and national mechanisms that allow children and those acting on their behalf as individuals or institutions to submit complaints regarding specific violations of children’s rights under the CRC and its first two optional protocols when such children or those acting on their behalf have not succeeded in getting redress for violations of their rights nationally. The conference aimed at raising awareness and understanding about the protocol and its communication procedure to governmental and non-governmental stakeholders as well as to explain how it complements regional human rights mechanisms in Africa and the positive implication of the protocol for children. It was also aimed at capacitating stakeholders to ensure that States in Africa ratify the protocol and strengthen their national child protection and justice systems and procedures.

It is the Commission’s resolve to continue advocating for Malawi’s ratification of this protocol in order to offer children access to justice at the international level when local mechanisms have failed to address a particular child rights violation.

4.5 Commemoration of the Universal Children’s Day and 25th Anniversary of the Convention on the Rights of the Child

The Commission in partnership with Plan Malawi and other stakeholders joined the world in commemorating the Universal Children’s Day on 20 November, 2014. This day was set aside by the United Nations in 1954 when the UN General Assembly adopted the Convention on the Rights of the Child (CRC). The day provides an opportunity to consolidate efforts for addressing challenges that impede the maximum realization of children’s rights. The day also provides an opportunity for Governments around the world to renew their commitment in addressing the plight of children including those who are vulnerable.

It was noted that although Malawi has recorded progress in the promotion and protection of children’s rights, there is need to do more at all levels of the society: central government, local government, local communities and the Non State Actors. The commemoration, whose climax was a press conference involving Plan Malawi, the Commission and other partners, was commemorated together with the 26th anniversary of the CRC. This was against the background that 2014 was the year when the CRC clocked 25 years after it came into force.

4.6 Support of exchange visits of the Malawi Police Service and the Courts

In order to enhance the effectiveness of child protection systems in dealing with cases of child trafficking, the Commission supported exchange visits of the Police and magistrates to learn best practices from each other on how best to deal with such cases. The Commission supported Dedza Police Station and Dedza Magistrate Court to learn from their counterparts at Mchinji Police Station and the district’s Magistrate Court. The exchange visits focused on the success stories, challenges, best practices and mapping the way forward on how best to provide effective justice with speed in all cases of child trafficking and other child rights violations using the Child Care, Protection and Justice Act, 2010 and other relevant pieces of legislation. Participants in the exchange visits included Police Prosecutors, Police Investigation officers, the magistrates and the District Social Welfare Officer for Mchinji district. It was expected that the exchange visit would help improve justice delivery in cases involving children in the targeted districts. The Commission envisions scaling up such initiatives to other districts.
5.0 Introduction

Rights of persons with disabilities and the elderly are human rights that States such as Malawi must strive to protect, promote and fulfill for the furtherance of human dignity for all and for the attainment of a just and inclusive society. These rights entitlements are guaranteed in various international, regional and sub-regional human rights instruments to which Malawi is party. The rights are further guaranteed in a number of domestic laws and policies. The Constitution of the Republic of Malawi, in section 20(1), prohibits any form of discrimination based on any grounds including disability or other status or condition. Essentially, the Constitution of the Republic of Malawi guarantees all persons equal and effective protection against discrimination on various grounds including on disability and ageing.

It is important to note that Malawi has a normative and progressive legislative and policy framework for the protection and promotion of the rights of persons with disabilities and the elderly. The country has over the years signed and ratified a number of international, regional and sub-regional human rights instruments that guarantee the rights of these two sections of the population. For instance, Malawi is party to the United Nations Convention on the Rights of Persons with Disabilities (CRPD 2006); Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (1994); World Programme of Action on Disabled Persons (1982); 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).

Malawi ratified the CRPD on 27th August, 2009, without any reservations. According to article 1 of the CRPD, the purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. This ratification and the eventual domestication of the CRPD through the enactment of the Disability Act of 2012 epitomised government’s commitment to the full realisation of the rights of persons with disabilities in Malawi. These developments heralded the ray of hope to the country’s disability community since disability rights has been a neglected subject in development and human rights debates for a long time in the country. The Disability Act became enforceable in August 2013.

Malawi is yet to adopt a national policy on elderly persons despite the policy being in draft form for a long time now. The elderly persons’ policy has been in draft since 2012. This delay in adopting this policy and the absence of this policy has greatly affected the formulation and implementation of elderly programmes in the country.

In 2014, the Commission carried out several activities on the thematic area of Disability and Elderly rights which included human rights monitoring; complaints handling; research; advocacy and education as highlighted below.

5.1 Complaints Handling

In the year 2014 the Commission received and registered 12 complaints on violations of the human rights of persons with disabilities and the elderly. Of these 9 cases were on disability rights violations whereas 3 were on violations of the rights of older persons. The 12 complaints received in the year 2014 is a drastic decline from 42 complaints received and registered in 2013, representing a 71% decrease in the complaints registered under the disability and elderly rights thematic area.

It is apparent that inadequate resources led to lack of sensitisation campaigns on disability and elderly rights conducted by the Commission; this was the main contributing factor to the drastic decline in the cases registered. In 2014 the Commission carried out a few outreach legal clinics and community sensitisation meetings on disability and elderly rights which provide a platform for victims of human rights violations and abuses to lodge complaints with the Commission. Additionally, disability and elderly rights practice in Malawi has been characterised by more advocacy, lobbying and service provision than human rights awareness raising and empowerment of persons with disabilities and the elderly to claim their rights. It is also important to highlight that active and influential non-state sector players in the mainstream human rights and good governance activism have relegated disability and elderly rights issues. This approach by many stakeholders have not empowered the locals at the grassroots especially persons with disabilities and the elderly the majority of whom are in rural areas where they also live on the margins of society thereby exacerbating their vulnerability in claiming and demanding their rights.

Nevertheless, it is important to state that the decreased number of complaints on disability and elderly rights violations was not an indication of the improved situation of the human rights of persons with disabilities and the elderly in Malawi. In fact the Commission’s situation analyses of human rights in the country in 2014 unraveled serious impediments to the enjoyment of fundamental rights and freedoms for persons with disabilities in the country. Ordinarily, therefore, the Commission expected more cases lodged with it in light of the deplorable situation of the rights of persons with disabilities and older persons in Malawi.

The following section highlights cases of violation of the rights of persons with disabilities which the Commission handled in 2014.

5.1.1 Mr. X (for his son) vs. Mzimba District Education Manager’s Office

The Commission received a complaint from Mr. X of Mzimba who alleged that his son was unfairly suspended from Kaphuta Primary School in the district. The learner, who has an intellectual disability, was suspended on 14th January, 2014 and no letter to give reasons to that effect was issued to the parents of the learner was suspended from school for allegedly throwing human excreta into a classroom through the window. It was reported that the child. The complainant further reported that the school authorities did not follow rules of natural justice in the administration of the disciplinary case.

Mr. X reported that he approached the District Education Manager on the matter on two occasions who only assured him to look into the matter without any fruition. The complainant regarded his son’s suspension from the school as a violation of his son’s right to education and also believed that his son was suspended from the school on the basis of his intellectual disability.

The Commission investigated the matter and found out that while there were genuine disciplinary issues levelled against the boy, the manner in which the learner was suspended violated the right to administrative justice in contravention to section 43(b) of the Constitution of the Republic of Malawi. This is because the reasons for the suspension were not furnished in writing as no letter on the decision was issued by the school authorities to the parents. The DEM’s inaction on the matter further affected the complainant’s legitimate expectations or interests negatively contrary to section 43(a) of the Constitution. Secondly, while the parents were heard in the disciplinary hearing the boy’s intellectual disability was not specially considered as his teacher (specialised in Special Needs Education) who knew the learner’s condition better was not involved in the hearing and the final decision by the head-teacher and the school committee. Thus the right to access to justice, provided in article 13 of the CRPD, was not respected in the disciplinary proceedings. Ultimately, the Commission established that the actions of the education authorities on the matter violated the boy’s right to education.
in view of the above findings the Commission recommended that the learner be readmitted to the school with immediate effect. It further held separate discussions with the parents, school management and the DEM on rights of children and learners with disabilities and their role as duty bearers. The Commission further established that the school had 18 learners with disabilities but without appropriate teaching and learning aids. With specific focus on the case the Commission advised the DEM to facilitate a meeting involving the learner’s parents, the head-teacher and the school committee on the readmission of the boy as well as on protecting the rights of the learners with disabilities the school had. The DEM and the head-teacher later informed the Commission that the learner had been readmitted and the complainant confirmed this development.

**5.2.1 Monitoring the implementation of the Disability Act of 2012**

In March 2014, the Commission received an anonymous complaint about a boy aged 5 years born outside wedlock and with a physical disability. The complaint was against his mother, grandmother and aunt. The anonymous complainant stated that the mother abandoned her child at her parent’s house in Mchinji district and went to settle with her husband in Mulanje district. It was further stated that the mother does not want to have custody of child because of the disability. It was reported that there is no knowledge of the whereabouts of the child’s biological father. The complainant also stated that the child is usually locked up in his grandparents’ house as both of them are full time employees. The grandparents were also staying with their two daughters, who ought to be taking care of the boy. The complainant added that one of the daughters, who was expected to be at home providing care to the child, is always away from home and locks the child up in the house. The complainant sought the intervention of the Commission in order for the grandparents to stop neglecting the child.

The Commission investigated the matter. In its findings it established that the child is 7 years old and that his disability is that of talking difficulty and slight learning difficulty but with quite good listening abilities. He had no visible physical disabilities. Upon marrying the child’s mother, the stepfather refused to take custody of the child when the new family relocated to Mulanje. The child was, thus, left with his grandparents in Mchinji where both of his grandparents are working. He was only 2 years old at that time. It was also established that the child is periodically visited by his mother who provides him with support in terms of clothing and other basic necessities. The child’s biological father was reported to have disappeared from the time the mother got impregnated and his whereabouts are not known.

The investigation team further established that the child is mostly left under the care of his aunt who sometimes leaves him alone at home. It was ascertained that the child suffered neglect. The child’s grandmother indicated that, with the assistance of her husband and the child’s mother, she would raise some capital to set up a small scale business at her house with which she would provide proper care for the child.

Following the findings, the resolution of the matter was that the grandmother should start a small scale business as planned to provide full time proper care for the child. It was also recommended that the guardians should enroll the child in school in the following academic year, 2015/16. Preliminary monitoring of the matter indicated that the neglect of the child by his guardians had stopped following the intervention.

At the time of writing this report the Commission was still monitoring implementation of its recommendations through Mchinji District Social Welfare Office.

**5.2 Human Rights Monitoring and Research**

**5.2.1 Monitoring the implementation of the Disability Act of 2012**

The enactment of the Disability Act of 2012 brought hope to persons with disabilities in Malawi as a specific piece of legislation to guarantee and protect their rights was put in place. During the year under review the Commission monitored the implementation of this Act. The objectives of the monitoring were:

a) To assess the extent to which the Government had implemented the Disability Act of 2012;

b) To establish the extent to which disability practice has changed since the enactment of the Disability Act;

c) To assess the level of awareness of the Disability Act among persons with disabilities, duty bearers and the general public.

From the Commission’s monitoring findings persons with disabilities still face numerous challenges to enjoy their fundamental human rights and freedoms that are laid down in the Act as well as the CRPD. Nevertheless, some strides have been made and continue to be made in meeting the needs of persons with disabilities. The work of Malawi Council for the Handicapped (MACOHA) in its Community Based Rehabilitation (CBR) Programme comes to the fore. Though, the work of MACOHA is limited to programme districts as the CBR programme does not cover the whole country. Despite a normative and comprehensive proclamation of rights of persons with disabilities under the Disability Act, the actual implementation of the law has not dealt with numerous bottlenecks facing persons with disabilities. The summarised key monitoring findings include:

a. The Department of Disability and Elderly Affairs (then Ministry of Disability and Elderly Affairs) – the custodian of the Disability Act – continuously get acutely inadequate funding from government over the years. This has negatively affected the implementation of the Disability Act.

b. The discordance between the Disability and other disability related legislation such as the Handicapped Persons Act of 1971 and the National Policy on the Equalisation of Opportunities for Persons with Disabilities (2006) has challenged the harmonised human rights based approach to disability programming.

c. Access to education for children with disabilities is still problematic despite the existing theoretically supportive policy environment for education of learners with disabilities. Inclusive education in Malawi is still a far-fetched dream as inadequate infrastructure, shortage of specialist teachers and lack of incentives to these teachers, inadequate learning and teaching aids and low funding to specialist schools, among others, have conspired to prevent the country from departing from the current Special Needs Education (SNE). Generally there is poor attendance by children with disabilities in Malawi due to lack of proper facilities that enhance access coupled with poverty and stigmatisation.

d. Public transport in the country remains completely inaccessible to persons with disabilities.

e. Lack of deliberate approaches to ensure that persons with disabilities genuinely benefit from social benefits programmes such as Farm Input Subsidy Programme (FISP), Public Works Programme (PWP), Social Cash Transfer Programme, Mudzi Transformation Trust and the newly introduced Decent and Affordable Housing Subsidy Programme.

f. Very few persons with disabilities are employed in the formal employment sector. This is due to set qualifications that do not take into account education situation of most persons with disabilities, stigmatisation and prejudice and challenges to access disseminated employment information which is often in inaccessible formats.

g. With regard to access to information persons with disabilities have not been able to access information disseminated through traditional media such as newspapers, television, the internet and radios. This is because there have been very few or no efforts to provide information to persons with disabilities in accessible formats – for instance, there is lack of brailled materials for the visually impaired and sign language interpreters in media and other institutions to cater for the hearing impaired. This undesirable scenario is more pronounced in rural areas where the bulk of persons with persons with disabilities live.

h. Access to justice for persons with disabilities is still a mammoth challenge. They continue to face numerous challenges when seeking justice due to inaccessibility (lack of legal information, lack of sign language interpreters, unfriendly court infrastructure and police cells), lack of legal presentation, lack of human rights knowledge and poverty. Additionally, there is still lack of knowledge and awareness among law enforcement agents such as police officers and magistrates on the Disability Act.

i. The Commission also established that the country has not invested much in disability related research as there is acute dearth of disability data especially on specific disability issues or areas such as intellectual disability, epilepsy and disability and access to justice among others. Development planning and implementation require adequate disability data in genuine disability mainstreaming.

j. Generally poverty is widespread and telling among persons with disabilities in Malawi; there are significant disparities between those living in urban and rural areas. These poverty levels among this vulnerable has been coupled by the lack of deliberate policy interventions to cushion persons with disabilities from poverty.
It is noteworthy that the establishment of disability focal persons in key government ministries and departments and parastatal organisations to champion disability mainstreaming in such public service institutions was a commendable action by the Government. Nevertheless, there is no meaningful and noticeable change in the way public institutions that have disability desk offices are working to promote equalisation of opportunities for persons with disabilities. Except for a few such as the Ministry of Health (positive propositions and efforts made at central level), many government ministries, departments and Parastatals are yet to institute appropriate processes indicating change in disability policy and practice following the establishment of the disability focal offices in respective institutions. Disability mainstreaming programmes in much of the public service are yet to be implemented for the benefit of persons with disabilities.

Many public service institutions were yet to improve on reasonable accommodation for persons with disabilities; ensure accessibility; include disability in institutional budgets for disability mainstreaming and change human resource related policies to be disability friendly among a myriad of gaps. It is worth noting that accessibility to persons with disabilities in Malawi has often been understood as physical accessibility to infrastructure – quite a limited view of the term accessibility. In light of this few public service institutions like public health facilities and some private sector organisations such as commercial banks and hotels have constructed ramps to enhance accessibility to persons with physical disabilities.

The Disability Act provides for the establishment of the National Advisory and Coordinating Committee on Disability Issues (NACCODI) and the Disability Trust Fund under sections 5 and 28 respectively. NACCODI, according to the Act is mandated to provide a forum for all stakeholders on disability issues to receive, discuss and review reports from government ministries and departments and other relevant stakeholders on disability mainstreaming; make recommendations to government on best practices regarding the formation of policies, legislation and programmes with respect to disability and to oversee the implementation, monitoring and evaluation of disability-related mainstreaming. Since the Act became enforceable in 2013 NACCODI is yet to be established by government as the law’s provision. Similarly, the Disability Trust Fund – which shall consist of monies given to the Fund by way of donations, contributions or grants to support the implementation of disability programmes and services – has not yet been established. It is widely admitted therefore that the absence of these two statutory structures militate against the effective implementation of the Disability Act.

With regard to popularisation of the Disability Act, knowledge and awareness on this relatively new legislation is still scanty and acutely limited among the majority persons with disabilities especially those in rural areas and among the general public alike. The Commission noted that there is a relatively good level of knowledge and awareness about the Disability Act among the leadership of the Disabled People’s Organisations (DPOs) and the urban persons with disabilities. This has posed a great challenge for the majority of persons with disabilities to demand and claim their rights as well as to report human rights violations abuses.

While the Department of Disability and Elderly Affairs (then the Ministry of Disability and Elderly Affairs) under the Ministry of Gender, Children, Disability and Social Welfare made commendable strides in popularising and publicising the Act there is still a lot of work to do generally ensure that the general public and persons with disabilities in particular are aware and knowledgeable about the Disability Act. The Department produced easy-to-read versions of the Disability Act and the CRPD besides reproducing the disability law in Braille format. Nevertheless, it is imperative to state that the Commission found out that the Ministry of Information, Civic Education, Tourism and Culture has failed to champion disability rights issues in its programmes let alone disseminating the Disability Act. In its exercising its mandate of informing and civic educating the public on various issues this ministry would have done better; it is therefore about time the ministry started championing disability rights issues in its civic education activities.

In conclusion, while there have been few positive achievements since the enactment of the Disability Act and its subsequent entry into force Malawi still has much to do in the implementation of the Act. The hope and guarantee of fundamental human rights and freedoms enshrined in the Act are yet to be realised since the enactment of the law in 2012.

5.2.2 Monitoring the Implementation of the UN Convention on the Rights of Persons with Disabilities

The effect of Malawi’s ratification of the CRPD in 2009 meant that the State committed itself to various obligations under this convention to ensure and promote the full realisation of all human rights and fundamental freedoms for persons with disabilities, without discrimination of any kind on the basis of disability.

Article 33(2) of the CRPD, on national implementation and monitoring obligates the State to “maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention.” The provision further states that in doing so the State is required to take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights (Paris Principles). In spite of this obligatory requirement under the Convention the State in Malawi is yet to designate this monitoring agency since 5 years after ratification of this international treaty. Essentially, therefore there has not been clear and designated independent monitoring of the CRPD since its ratification by Malawi in 2009.

In view of this the THE COMMISSION and Federation of Disability Organisations in Malawi (FEDOMA) have been strategising to champion the designation of the former as an independent monitoring agency of the CRPD in the country by virtue of its legal status as a National Human Rights Institution (NHRI). This is also in recognition of THE COMMISSION’s role in ensuring compliance with obligations under various international and regional human rights instruments to which Malawi is party.

5.2.3 Monitoring Education Institutions for Children/Learners with Disabilities

The Commission in collaboration with the Department of Disability and Elderly Affairs and the Department of Special Needs Education, undertook a monitoring exercise of education institutions for children and learners with special needs. The monitoring targeted 18 institutions from selected districts in all the country’s regions: Karonga, Mzimba, Nkhata-Bay districts in the Northern region; Lilongwe, Kasungu, Nkhotakota, Dedza and Ntcheu districts in the central region and Mangochi, Balaka, Phalombe and Chiradzulu districts in the southern region.
The overall objective of the exercise was to monitor and assess the quality of care and education provision to children with special needs under institutional care.

During the monitoring 18 education institutions for children with disabilities were monitored as follows: Karonga School for the Deaf (Karonga); St. Mary's School for the Blind (Karonga); Nyungwe Resource Centre for the Visually Impaired (Karonga); Ekwendeni Resource Centre for the Blind (Mzimba); Embangweni School for the Deaf (Mzimba); Bandawe School for the Deaf (Nkhotakota); St. Mary's Gollele Resource Centre for the Visually Impaired (Nkhotakota); Chilanga School for the Blind (Lilongwe); Malingunde School for the Blind (Lilongwe); Mua School for the Deaf (Dedza); Misyalyuduzu Resource Centre for the Visually Impaired (Ntchisi); Elephanta School for the Visually Impaired (Nkhotakota); Mary View School for the Deaf (Chiradzulu); Montfort Demonstration School (Chiradzulu); Chisombezi Deaf-Blind Centre (Chiradzulu); Mtoko School for the Blind (Mangochi); Migowi Resource Centre for the Deaf (Phalombe) and St. John Paul XXIII Centre for the Handicapped (Balaka).

The monitoring exercise found that despite the policy shift from Special Needs Education (SNE) to Inclusive Education (IE), Malawi is still seriously struggling to genuinely adopt the latter since the former is still the practice in the country's education sector. Implementation of inclusive education is still a far-fetched dream for Malawi considering a myriad of hiccups rocking special needs education provision. The country's continued focus on SNE is manifest in the current set-up for education of children with special needs where regular schools have resource centres for the special needs learners and the continued emphasis on institutional care provision to children with disabilities in specialised schools.

The report on the monitoring exercise made a number of recommendations aimed at addressing the current problems some of which are:

a) Government should consider increasing funding to special education schools under the MoEST. Government should generally adequately fund the disability sector with specific focus on education and rehabilitation of children with disabilities;

b) The country, through the MoEST, should consider moving away from SNE to Inclusive Education; there is need for the children with special needs to be cared under inclusive education to promote inclusion and move away from social exclusion entrenched under the set-up of specialist schools and resource centres in regular schools;

c) The MoEST should ensure that regular teachers’ training curriculum incorporates more issues on disability;

d) Government should consider training more specialist teachers for both primary and secondary education. This training should further emphasise on upgrading of the teachers to diploma and degree levels for the realisation of Inclusive Education in Malawi;

e) The MoEST should periodically monitor and inspect these special needs education institutions to appreciate the challenges faced by these institutions;

f) The Malawi National Examinations Board (MANEB) and MoEST should review the implementation of inclusive education in Malawi in order to take into consideration the special needs of learners with disabilities. MANEB should further train its staff or recruit staff with skills and knowledge on different disabilities;

The country should further train its staff or recruit staff with skills and knowledge on different disabilities.

g) There is urgent need for the MoEST to establish SNE desk offices at district and divisional educational authority levels in order to promote and fully and adequately mainstream SNE in the national education system;

h) Government, through MoEST, should consider financially supporting Chisombezi Deaf-Blind Centre, among other things, beyond merely posting specialist teachers to the institution. Government should also train more teachers in deaf-blind education.

i) There is need for increased awareness on children with disabilities among the general public and families, households and parents of children with disabilities in particular;

The local councils in Malawi should operationalise section 72 of the Child Care, Protection and Justice Act 2010 in order to ensure that children with disabilities are identified and assisted by district authorities at the local level and that the children with special needs receive support from government at the local level.

Section 72 of the Act stipulates that a local government authority shall keep a register of children with disabilities within its area of jurisdiction and give assistance to them whenever possible in order to enable those children grow up with dignity among other children and to develop their potential and self-reliance.

k) The Department of Disability and Elderly Affairs should devolve its activities and operations to the district level just like the most line ministries and departments. The MOCGD and the Department of Disability and Elderly Affairs offices in all the local councils in Malawi. This will help mainstream disability issues at the district level including issues of children with disabilities;

l) The MoEST, Department of and the Disability and Elderly Affairs and the Commission should conduct joint or lone periodic monitoring and inspections of the special education institutions to help improve the provision of institutional care and inclusive education.

5.3 State Party Reporting

5.3.1 Preparation of Initial and Second State Party Report on Convention on Rights of Persons with Disabilities (CRPD)

Malawi signed the United Nations Convention on the Rights of Persons with Disabilities on 27th September, 2007 and ratified it, without any reservations, on 27th August, 2009. According to Article 35(1) of the UNCRPD, Malawi’s initial report was due two (2) years after the Convention came in force, that is, 27th August 2011. Notably, this initial report had been delayed by three (3) years. Therefore Malawi’s submission of her second State Party report is scheduled for 2015.

Against this backdrop the Department of Disability and Elderly Affairs (then Ministry of Disability and Elderly Affairs) led the process of developing the initial and second State Party reports. The Commission was one of the key actors in the task force for the preparation of the initial and second State Party reports. To this end the Commission contributed to the various processes in drafting the reports. It took part in the national stakeholder consultative meetings with the consultant charged with the development of the reports. The Commission made a submission on the progress achieved and challenges encountered in the promotion and protection of rights of persons with disabilities in Malawi and human rights situation of persons with disabilities in various spheres. Further, the Commission undertook district consultative activities such as meetings, key informant interviews, individual interviews and Focus Group Discussions (FGDs) in collecting data from local and grassroots stakeholders on the situation of the rights of persons with disabilities in respect of the drafting of the State Party reports.
The Commission also took part in the reviewing of the draft initial and second State Party reports along with other players at various task force meetings. It was also involved in the validation of the national stakeholders’ validation workshop of the UNCRPD Draft Report. At the time of writing this annual report the initial and second UNCRPD State Party reports were yet to be submitted to the Committee on the Rights of Persons with Disabilities and the Commission was still involved in stakeholders’ and task force meetings on the draft report.

It is imperative to state that the Commission observed the discordance and divergent views among integral stakeholders on the mode of data collection for the State Party report, actual content of the draft report and the extent to which the draft State Party report reflected the true situation of persons with disabilities in Malawi. During review and validation of the draft report the Commission observed that such key stakeholders as FEDOMA and some of its affiliated DPOs as well as other disability sector players expressed intense reservations on the draft State Party report. It is in view of this that the Commission supported the idea of FEDOMA and other CSOs to come up with a Shadow Report to “shadow” the UNCRPD State Party Report.

5.4 Education, Information and Training

Pursuant to its functions and duties to act as a source of human rights information and assist in educating the public on, and promoting awareness and respect for human rights as per section 13 of the Human Rights Commission Act of 1998, the Commission undertook some education and information dissemination activities on disability and elderly rights.

5.4.1 Disability rights trainings, capacity building and community awareness for DPO local actors

In the first half of 2014 the Commission, in collaboration with Child Aid Malawi, conducted an onsite training and orientation on disability rights for Development and Integration of Persons with Disabilities (DIPD) – a project which reinforces the capacity of rural communities to effectively manage disability challenges in Mchinji district. The trainings and awareness meetings focused on children with disabilities in particular and disability rights general. These were conducted in DIPD’s project areas, Mchaisi area in T/A Dambe and Chimteka area in T/A Simphasi in Mchinji district.

The targeted groups included: traditional leaders; parents of children with disabilities; Parent Support Groups (groups of parents of children with disabilities); Child Protection Workers; Health Surveillance Assistants (HSAs); primary school teachers; Community Volunteers on the welfare (rehabilitation, care, rights protection and promotion etc.) of children with disabilities; Community Based Child Care Centre workers; DIPD’s rehabilitation workers; children with disabilities; family members of children with disabilities. The Commission further orientated the management of Chimteka Children’s Support Centre – a centre that assists children with disabilities including provision of rehabilitation services and provision of assistive devices among others – on the rights of children with disabilities. As a way of building and enhancing capacity to DPOs the Commission provided expert support to Malawi National Association of the Deaf (MANAD) on advocacy and lobbying on the rights of the deaf community. This expert support focused on disability rights advocacy and lobbying methodologies.

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

In pursuit of its duty of raising awareness on disability rights the Commission continued with the distribution of booklets the Chichewa version of the UNCRPD. These were distributed to the general public during community outreach sensitisation campaigns; during conferences, training workshops and stakeholders’ meetings. About 2500 booklets were distributed in 2014.

5.4.3 Commemoration of the World Elder Abuse Awareness Day

The World Elder Abuse Awareness Day is commemorated on 15th June yearly for the world to voice its opposition to the abuse and suffering inflicted on the elderly. Malawi commemorated the day – which aims at bringing awareness to the society about the abuses older persons in various spheres of life – on 26th June, 2014. The Commission took part in this commemoration by providing a key note address onelderly rights at the function with focus on raising awareness on the rights of the elderly; enlightening people on the challenges that the elderly face and remedial measures and mechanisms for the protection of the rights of the older generation. The commemoration which took place at Masintha Ground in Lilongwe was attended by over 2,000 people. The MoGCDSW and the Malawi Network of Elderly Persons’ Organisation (MANEPO) led the nation in the commemoration.

5.4.4 Submission to the UN Human Rights Council on the Situation of Persons with Albinism in Malawi

The Commission made a submission to the Human Rights Council Advisory Committee through questionnaire based responses on the situation of human rights of persons living with albinism in Malawi. This was responding to the Human Rights Council Advisory Committee’s seeking views and inputs from different stakeholders with a view of its preparing a study on the situation of human rights of persons living with albinism pursuant to Council Resolution 24/33.

The submission highlighted the unique and disproportionate nature of human rights violations and abuses faced by persons with albinism in Malawi compared to other categories of disabilities. It also highlighted the grave violations and attacks suffered by persons with albinism as well as the serious of the problem of stigma and prejudice against these persons in the country. Further, the Commission’s response to the Committee brought to light the obstacles impeding the efforts to improve the human rights situation of persons living with albinism in spite of the existing legislative, administrative, institutional and policy measures put in place for the elimination of violence against persons with albinism and their protection from all other human rights violations.

In light of the appalling situation of human rights of persons with albinism in Malawi the Commission included recommendations to national authorities and the Human Rights Council and other UN Human Rights bodies. Such recommendations included raising awareness of rights of persons with albinism among the populace; publicising or popularisation of legal information pertaining disability rights and instituting special procedures in the UN human rights system for the protection and promotion of persons living with albinism.

5.4.5 Policy Analysis Workshop on Article 25 of UNCRPD with focus on HIV and AIDS

Article 25 of the UNCRPD provides for the right to health to persons with disabilities. On 29th October, 2014 the Commission participated in a policy analysis workshop organised by a local NGO – Disability HIV and AIDS Trust (DHAT) – focusing on the UNCRPD domestcisation and implementation in Malawi. This workshop was against the background that Article 25 of the Convention is very critical for disability inclusive HIV and AIDS and Sexual and Reproductive Health Rights (SRHR) interventions.

The Commission made a presentation on the policy, legal, institutional, social-cultural and attitudinal challenges hampering the inclusion of persons with disabilities in HIV and AIDS mainstreaming programming in the country. Participants widely acknowledged the numerous policy gaps in health programme’ implementation that has not taken cognizant of disability inclusion. It was wholly agreed that there is little progress made in the domestcisation of the UNCRPD with respect to Article 25. The workshop drew participants from the DPOs, FEDOMA, Ministry of Health, Department of Disability and Elderly Affairs and the Malawi Human Rights Commission among others.

5.4.6 Stakeholders’ meetings on Deaf Rights by Malawi National Association of the Deaf

The Malawi National Association of the Deaf (MANAD), one of the DPOs in Malawi, organised two stakeholders’
workshops held from 22nd to 24th July, 2014 in Lilongwe. Under the themes “Challenges the Deaf Students are facing in Accessing Education in the 21st Century” and “Nothing Diverse without Us” the Commission was one of the facilitators of the meetings. Some of the critical issues tackled by disability rights stakeholders during the meetings included:

- i. Situation of Deaf Education in Malawi;
- ii. The realities of Deaf education and policy gaps;
- iii. Deaf students and the administration of examination by the Malawi National Examination Board (MANEB);
- iv. Government policy on Special Needs Education: Successes and challenges;
- v. Human rights and the Deaf;
- vi. The role of sign language interpreters in rights of promoting human rights;
- vii. UNCRPD and the rights of Deaf persons: Situation in Malawi, legal and policy recommendations;
- viii. Disability Policy, Disability Act and the rights of Deaf persons in Malawi; and
- ix. Personal experiences of the Deaf: case stories from Deaf students and Deaf employees.

Other stakeholders at the meetings were the Department of Disability and Elderly Affairs, Ministry of Education, Science and Technology, MANEB, FEDOMA, the Catholic University of Malawi, Eye of the Child, Malawi Council for the Handicapped (MACOHA) and representatives from different media houses. At the end of the meetings, the Commission facilitated the development of a communiqué or position paper from the deliberations to be used for Deaf rights advocacy. The communiqué was later developed and with it MANAD already started engaging different Deaf rights duty bearers like the Department of Disability and Elderly Affairs, Department of Special Needs Education of the MoEST and MACOHA.

5.4.7 African Network of Evidence to Action on Disability (AfriNEAD) 2014 Symposium

From 3rd to 5th November, 2014 the Commission participated in the 2014 AfriNEAD Symposium which was hosted by the Faculty of Social Science at Chancellor College of the University of Malawi in collaboration with the Department of Disability and Elderly Affairs of the Government of Malawi, FEDOMA and the Secretariat of the AfriNEAD at Stellenbosch University in South Africa. The symposium was held in Mangochi district under the theme “Intensiﬁxing disability research and practice to achieve the MDGs in Africa: our experience and aspirations for the future”.

Besides participating in the deliberations, discussions and plenary sessions over the presentations made on various areas pertaining to disability the Commission speciﬁcally participated in the breakaway commission groups for the symposium’s parallel sessions.

5.4.8 Preparatory meeting with FEDOMA on the UNCRPD Shadow Report for Malawi

In 2014 Malawi drafted the initial and second periodic report under the UNCRPD to be submitted to UN Committee on the Rights of Persons with Disabilities in 2015. In order for the Committee on the UNCRPD to effectively monitor the implementation of the Convention in a State Party like Malawi CSOs and DPOs are highly encouraged to provide a Shadow Report on the implementation of the CRPD at the domestic level.

The Shadow Report of CSOs and DPOs provides the Committee with accurate and appropriate information documenting a government’s disability rights record and recommendations for improving the protection of human rights of persons with disabilities in a country. Such information is important for the Committee in its assessment of a government’s compliance with the UNCRPD. Against this backdrop FEDOMA organised a preparatory meeting on the drafting of Malawi’s Shadow Report on the UNCRPD in order to “shadow” the initial and ﬁrst periodic reports for Malawi to the Committee. In fact, according to FEDOMA, many DPOs and other stakeholders in the country’s disability sector had noted numerous grey areas and misrepresentation of facts on the situation of the rights of persons with disabilities in the draft State Party report.

The Commission co-facilitated this preparatory meeting which drew participation of stakeholders such as the Centre for Human Rights Rehabilitation (CHRR), the Malawi Law Society (MLS), Chancellor College Disability Rights Clinic, DPOs such as Disabled Women in Development (DIWODE), the National Epilepsy Association in Malawi, Parents of Disabled Children Association in Malawi (PODCAM), Malawi Union of the Blind (MUB), the Malawi National Association of the Deaf (MANAD) and the Visual Hearing Impairment Membership Association (VIHEMA). At the time of writing this annual report the Commission was still involved in the progressive work on the preparation of the UNCRPD Shadow Report for Malawi expected to be submitted in 2015.

5.4.8 Strategic meeting with Association of Persons with Albinism in Malawi (APAM) over attacks and killings against Persons with Albinism

In September, 2014 the Commission and Association of Persons with Albinism in Malawi (APAM) had a strategic meeting in Mzuzu to map the way forward in the wake of the wave of brutal attacks and killings of people with albinism in the country. The meeting noted that attacks and threats manifesting in killings, kidnaps, abductions and trafficking of persons with albinism were thriving in the country without government instituting measures to address the attendant systemic violations of human rights of persons with albinism let alone make a formal position on the status of persons with albinism in the country.

The Commission noted that the issue of the rights of persons with albinism is neglected yet these people face problems in enjoying their rights and fundamental freedoms owing to the nature of their disability. During the meeting APAM shared the Commission with statistics on reported cases of attacks against persons with albinism in the country which was also shared with Government through the Department of Disability and Elderly Affairs. Therefore the Commission observed that there is need to do more on the implementation of the legislative and policy provisions on protection of persons with disabilities in Malawi in general and persons with albinism in particular.

To this end the Commission and APAM strategised on mounting joint efforts in a bid to address this critical human rights issue by way of investigation, raising awareness on the rights of persons with albinism and engagement of relevant authorities in dealing with alleged and reported cases of attacks.
Chapter Six:
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, protection and development 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 cooperation, 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.

In the year 2014, the Directorate undertook several activities aimed at promoting and protecting economic, social and cultural rights such as complaints handling, public hearings, monitoring of places prone to human rights abuse, human rights-based approach to HIV and AIDS, among others. These activities are further described and discussed in the subsequent subheadings.

6.1 Complaints Handling

The following are the highlights of cases bordering on economic, social and cultural rights violations, as handled by the Commission.

6.1.1 Concerned residents of Mchengautuba Vs. Malawi Housing Corporation

The case involved a land dispute between Kangawa Mhone, Franklin Harawa and others (Applicants) on their behalf and on behalf of residents of Mchengautuba, restraining the Malawi Housing Corporation (Respondent). The applicants applied to the Court to stop the Respondents either by itself, its servants or agents, from evicting the applicants or taking possession of the applicants’ houses or plots; or enforcing its demands that the applicants should pay for their plots in Mchengautuba in the city of Mzuzu, until the determination of the substantive matter or until further order of the court.

The court ordered the Respondents and Applicants to engage with each other meaningfully with the assistance of the Commission in an effort to resolve the differences and issues arising. Additionally, the court ordered the Respondent, Applicants and the Commission to file affidavits before the Court reporting on the results of engagement between the parties.

In respect of the Court Order, the Commission facilitated the mediation meeting between the Respondent and the Applicants. The mediation meetings were conducted on two separate occasions. The first meeting took place at Mzuzu District Registry-Malawi High Court in the Board Room, on 7th October, 2014; and the second meeting took place on 22nd November, 2014 at the same venue. In both occasions the Commission emphasized that the aim of the mediation was to find a win-win solution to the dispute and the two parties were requested to reach a reasonable compromise. The commission also highlighted that the Commission was not going to exercise the powers of the court by judging who was right or wrong.

The Commission approached the mediation process from a neutral perspective. At the end of it all, the two parties did not reach a common ground to resolve the matter through a win-win solution. In summary, on one hand, the Respondent, made an emphasis that they were ready to reduce the price of plot charges and also reasonably extend the repayment period for the plots. On the other hand, the Applicants vehemently resisted paying the Respondent for the plots, because the said plots in their view are already theirs since time immemorial.

In respect of the decisions made by the Respondent and the Applicants and the Court order, the Commission filed an affidavit before the court, detailing the process and outcome of the mediation. At the time of writing this Report the determination of the court on this matter was yet to be done.

6.1.2 In the Matter of Civil Aviation vs. Ministry of Transport and Attorney General.

This is a case where a group of employees under the Department of Civil Aviation, who were working at the Kamuzu International Airport complained to the Commission that they were unfairly dismissed and that the Industrial Relations Court treated them unfairly, thus their seeking the services of the Commission.

The Commission conducted mediation on this matter, with an aim of resolving the matter outside the court of law. However, the concerned Parties did not come to an agreement and the matter proceeded to be continued in court with injunctions and appeal against the determination made by the Industrial Relations Court. The Commission, with respect to its mandate, went ahead to seek the intervention of the Solicitor General to reason with the Ministry of Transport, the employer of the aggrieved party but nothing has come to fruition. The Commission is currently waiting for feedback from the office of the Solicitor General so that the complainants can be reinstated and their arrears be paid as the transfers will be effected and investigations into their complaints will be continued.

6.1.3 In the matter of Salima Hospital Mortuary.

The Commission through its Current Affairs Committee noted some media reports alleging that the cold rooms at the Salima District Hospital mortuary were not working and that some dead bodies were actually decomposing. The Commission investigated the matter and established that some of the mortuary cold rooms were actually working properly, contrary to the media reports which had indicated that all the cold rooms were not functioning. Additionally the investigations’ team did not find any decomposed or decomposing body in the mortuary. The investigations on the matter involved inspection of the mortuary cold rooms and later on the District Health Officer (DHO) was also interviewed. The interview with the DHO established that the hospital faces challenges in terms of funding limitations and funding delays which at times compromises the operations of the hospital.

The Commission therefore made a recommendation to the Government to consider scaling up funding to the hospital in order to improve health service delivery. This would help ensure that drugs and other medical supplies are consistently available and that the hospitals run properly without compromising quality of the service delivery to the general public.
6.1.4 Follow up on a land case of Kalengezeka and others.

This is a case where the Village heads Msimnda, Kalengezeka and Chinyanga presented a complaint to the Commission, alleging that Government had forcefully evicted them from their ancestral villages in Chipeta area in Kasungu district. They indicated that in evicting them, Government had declared their place as a protected area forming part of the Nkhotakota Game Reserve, since 1971. The complainants further alleged that they were not consulted, and that no alternative settlement land was offered to them. Additionally, they also alleged that no compensation was paid.

The Commission instituted an investigation on the matter. The investigations established that procedures were not followed during the process of evicting people from the area. In light of this, the Commission engaged the District Commissioner for Kasungu and the Director of Parks and Wildlife and the concerned parties to resolve the matter through mediation. The mediation meeting resolved that the Ministry of Tourism, Parks and Wildlife should further engage the concerned people in a meaningful dialogue to resolve the matter amicably. The Commission was also tasked to closely monitor the situation on the ground and ensure that the recommendations and other related steps which the Ministry of Tourism, Parks and Wildlife had agreed to undertake are implemented and respected.

6.2 Public Inquiry on the Status of Sexual and Reproductive Health Rights

The Commission held a public inquiry (the inquiry) on the status of Sexual Reproductive Health and Rights (SRHR) in Malawi. 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 protecthuman rights in Malawi and to assess human rights situations falling within its competence. The inquiry, which involved public hearing meetings in Kasungu, Rumphi and Mangochi districts, was facilitated by a five (5) member panel whose chairperson was Justice A. Mtalimanja, the High Court Judge of Malawi. The other members of the panel were: Commissioner Ambassador Sophie Asimenye Kalinde, Mrs. Grace Malera, Mr Maziko Matemba and Mr. Mzati Mbeko.

The inquiry was carried out against the background that the Malawi Government has initiated several interventions on SRHR through laws, policies and programmes such as, the National Policy on Sexual and Reproductive Health Rights, 2009, the Maputo Plan of Action, the Malawi Growth and Development Strategy (MDGS II). The Malawi Government has also embedded SRHR in various laws such as the Gender Equality Act, 2013, the Prevention of Domestic Violence Act, Child Care, Protection and Justice Act, 2010 and the Disability Act 2013. Despite these interventions, the Malawi Demographic Health Survey (DHS) 2010, indicates that Malawi’s maternal and neonatal health situation continues to be characterised by high maternal mortality, the highest in Sub-Saharan region at 675/100,000 live, neo-natal death at 31/1000, infant mortality rate of 66/1000 and 112/1,000 under five mortality rate. Secondly, Malawi is still faced with critical unmet needs in the area of sexual reproductive health and rights and has some of the poorest sexual and reproductive health indicators. The public inquiry was therefore carried out as one way of addressing this gap, by way of appreciating the systemic and structural violations of SRHR.

The inquiry commenced with the call for submissions from the public and private institutions, parastatals, Non-Government Organizations (NGOs) and other interested groups and individuals on a number of human rights thematic areas relating to SRHR. The inquiry was also preceded by interface meetings with the District Executive Committee (DEC) members and communities through Focus Group Discussions (FGDs) on availability, accessibility, affordability and quality of SRHR services and products within their areas. The FGDs were conducted in the communities of Kasungu, Rumphi and Mangochi.

The main aim of the inquiry was to establish key challenges and opportunities that people in the rural areas face, in terms of their enjoyment of SRHR services and products. Specifically, the inquiry was designed to achieve the following objectives:

a) raising awareness and promoting public debate about SRHR, in order to ensure greater respect, promotion and protection of these rights;  
b) raising awareness among community members about their rights and providing them with the opportunity and forum to express their opinions, views and describe their experiences about availability, accessibility, affordability and quality of SRHR services and products in their locations;  
c) assessing the nature and magnitude of the challenges that community members face in enjoying SRHR and establishing what they do when their SRHR are violated; and  
d) examining and evaluating laws, policies and practices which affect the enjoyment of SRHR services and products and to make recommendations for improvement and review of policies, practices or reform of laws or administrative processes where appropriate; and ensuring better respect, protection, promotion and fulfilment of SRHR.

The inquiry provided community members with a forum to engage with duty bearers through among other things, provision of testimonies on the challenges faced by community members in accessing SRHR services and products in public hospitals. The inquiry also provided a forum for the community members to appreciate the role of various duty bearers such as the Ministry of Health, the Police, the Courts, the District Social Welfare Offices, as well as the role of chiefs, Non-Governmental Organizations and the Commission in ensuring that SRHR are promoted and protected.

Further, the inquiry brought to light how cultural attitudes and practices affect the enjoyment of SRHR at the family level, as well as the community level. Based on the findings of the inquiry, the Commission made a number of recommendations to various stakeholders, authorities and duty bearers. The comprehensive report of the public inquiry was planned for dissemination in the second quarter of the year 2015.
6.3 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 the year 2014, the Commission undertook a number of monitoring exercises, as described below;

6.3.1 Monitoring the impact of cash gate on the enjoyment of Human Rights.

The Commission conducted a nation-wide monitoring exercise to establish the impact of “cash gate” on the enjoyment of human rights in Malawi. The term “cash gate” in this context refers to the financial scandal involving the looting, theft and corruption that happened at the headquarters of Government of Malawi, at the Capital Hill, in between the years 2009 - 2014. The monitoring exercise mainly focused on the health and education sectors. These two sectors were isolated because they are central for any person’s ability to enjoy any other rights that are guaranteed by the Constitution and international human rights law.

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The findings of the monitoring exercise and the desk review, revealed that from an ideal budget of MK274 billion which the Ministry of Health required to operate efficiently and effectively, the sector was allocated MK69 billion in the 2014/15 annual budget, representing 9.2% of the total budget. This allocation was noted to be below the international benchmark the ABUJA Declaration set, which requires member states to allocate at least 15% of the national budget to the health sector.

Additionally, due to the cash gate scandal, the country also experienced disruptive budget deficits due to donors’ suspension, withholding and withdrawing of the budget support. In this regard, the monitoring exercise also revealed that there were generally delays in disbursing monthly funding to District Hospitals, a situation which was attributed to the fact that Government had to resort to implementing a “zero aid budget”. The problem of shortage of medical staff was also established in almost all the districts hospitals and health centres visited.

In terms of staff motivation, the medical workers at the health centres and clinics also reported that they were highly demotivated due to the policy being followed on overtime allowances. They indicated that for instance, for overtime work, the health workers at health centres and clinics only get a fixed amount of MK8,000 per month, in contrast to their counterparts at the District Hospitals who actually get MK3,200 per 8 hour day shift and MK3,600 per 16 hour night shift.

The health care staff also reported that they scarcely go for leave or holiday due to pressure of work. In terms of their enjoyment of the right to the highest attainable standard of physical and mental health, the monitoring exercise established that the prevailing situation of drug availability found at most health centres, such as Jenda in Mzimba, Lilongwe in Kasungu and Kwagazanga in Mchinji was very pathetic, as most essential drugs were out of stock. For example, the Commission’s monitoring revealed that the facilities had stock-outs for Cotrimazole (both for Anti-Retroviral Therapy, ART and general treatment), Hypertensive drugs and intravenous fluids (used during surgical operations). At Jenda Health Centre it was also stated that the previous two weeks preceding the monitoring activity, the facility had no Panadol and Aspirin. At the time of the monitoring, most health centers were actually only supplied with Malaria drugs only.

It was further uncovered that the facilities had only experienced some relatively good stocks of essential drugs from January to July 2014. This was actually because UNICEF had supplied these drugs directly to the facility. From August 2014 to the time of the monitoring the situation had gone bad, as acute stock-outs were experienced. Ideally, drugs are supposed to be delivered to the health facilities monthly; however, this is not adhered to hence the frequent stock-outs.

In terms of delivery of education services, in the 2014/2015 national budget, the education sector was allocated MK127.9 billion representing 17.2% of the national budget, which was actually a reduction from the 20% which was allocated in the 2013/14 Fiscal Year’s budget. What is also critical to note in the budget for the education sector was that the funding for the construction of school blocks and teachers’ houses was reduced from MK8.8 billion in the 2013/14 to MK2.9 billion in the 2014/2015. Secondly, the special needs education allocation was also not directly budgeted for, unlike in the previous two FY budgets.
The consequences of these decisions was that, the monitoring exercise revealed that in almost all the schools visited, there were learners with disabilities but with no specialized teachers qualified in Special Needs Education (SNE). It was reported that students and pupils with low vision or other learning difficulties are only assisted by ensuring that they sit near the chalkboard. In almost all the primary schools visited, it was reported that the classroom blocks were inadequate and in some cases pupils were seen learning under a tree.

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

a) Government should increase 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 should run properly without compromising quality of the service delivery.

b) The Ministry of Health should consider reviewing its policy for the payment of Locum to ensure that there is harmonisation.

c) 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.

d) Government should increase 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 a serious shortage of bed space, resulting in overcrowding because the facilities were built when the population was relatively smaller. Kochilla Health Centre in Mchinji district immediately comes to mind, as one of probably the oldest, with most of its old buildings on the brink of collapsing at any moment, posing a hazard to the lives of many.

e) Government should install effective back-up equipment in all the health facilities, to ensure that there is constant supply of water and electricity. This will help avoid further serious compromise to health care service delivery standards, due to frequent water and electricity disruption in the country. Going beyond that line of thinking, Government should provide free water and electricity supply to health facilities, since they are Government owned and it is thus quite crucial to the essential services rendered to the masses.

f) Government, through the Ministry of Health, should start providing explanatory literature in large print or in Braille, to assist people with visual impairments, or it should at least make arrangements for interpreters, at least for those with hearing impairments.

6.4 Education, Information and Training activities

The Commission’s Strategic Plan of 2011-2015 identified 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:

6.4.1 Human Rights-Based Approach (HRBA) to HIV and AIDS Project.

The project was initiated having noted the fact that reports of stigma and discrimination at Districts, City Councils and health service institutions. The project will among other activities entail conducting HTC Regional sensitization meetings, monitor the existence of HIV and AIDS workplace policies way into 2015. Further to this, the project will also conduct on spot investigations and monitoring of any violation of Human Rights for people that are living with HIV and AIDS.

It is expected that by the end of this project, the following will be achieved and fully consolidated cumulatively:-

a) Increased knowledge on Human Rights based Approach to HIV and AIDS by Communities and Controlling officers at District level;

b) Reduction in cases of stigma and discrimination in communities and health service institutions;

c) People living with HIV and AIDS be able to claim their rights and be able to report any violation of their rights to Malawi Human Rights Commission or any other institution that might be in a position to assist;

d) Increased capacity knowledge of chiefs and communities on harmful cultural practices that are linked to HIV and AIDS;

e) Increased knowledge of human rights principles by young people living with HIV and AIDS.
Chapter Seven:
Gender and Women’s Rights

7.0 Introduction

The Commission’s work in the area of gender and women’s rights is firmly grounded in national and international law. The following are the national and international instruments that guide the Commission’s work in this area.

Section 24 of the Constitution makes provision for various human rights entitlements for women, including the right to full and equal protection by law and prohibits the discrimination of women on the basis of gender or marital status. The Commission’s work in this area is also guided by a number of legislations, including: the Prevention of Domestic Violence Act, the Penal Code (Cap 7:01 of the Laws of Malawi); the Employment Act, (Cap. 55:02 of the Laws of Malawi) and the Gender Equality Act of 2013.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted by the UN in December, 1979 and the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women (the Maputo Protocol) are the international instruments which also guide the Commission’s work in the area of gender and women’s rights. These instruments define what constitutes discrimination against women and sets up an agenda for national action to foster and promote greater equality.

In line with these national and international provisions, the Commission in 2014 carried out a number of activities in the area of Gender and Women’s Rights and the following sections highlights some of them.

7.1 Complaints Handling

This section covers the case handling activities relating to gender and women’s rights in the year. The cases were handled through investigations, mediation while others were referred to other appropriate institutions for redress. The Commission also conducted public inquiries on Gender Based Violence: Accessing Justice in Rural Communities. Appropriate recommendations on specific cases were also made to relevant authorities for redress. The following are the highlights of cases of women which the Commission, through the Directorate of Gender and Women’s Rights handled.

7.1.1 Dorcus Ngulube vs. Arnold Ngulube

The Commission received a complaint from Ms. Dorcus Ngulube (complainant) alleging that Arnold Ngulube (respondent and brother) inherited land from their father in 1991 when their father died. She alleges that Arnold has been refusing to share part of the land with the complainant who has nowhere to cultivate food crops, saying that as a woman she has no claim to the land.

Investigations were conducted by interviewing the following: Arnold Ngulube, Dorcus Ngulube and Group Village Headman Chakwera.

The Commission is scheduled to conduct mediation involving the two parties and the Group Village Headman Chakwera to resolve the disagreements over this land dispute and ensure that Dorcus and her sisters get their share of land irrespective of their gender as the law under the Constitution states that every person is equal before any law.

7.1.2 Gertrude Mwakiyale vs. Mickdona Namkonda and Thomson Mwentumba

The Commission received a complaint from Ms. Gertrude Mwakiyale (complainant) alleging that she is being denied to get her share of matrimonial property she contributed towards in her marriage with Thomson Mwentumba.

The complainant stated that she married Thomson Mwentumba in 1992 until they divorced in 2004 in Karonga. She alleges that she pushed for her share of matrimonial property when divorce was granted by Ngerengere Magistrate Court but the family was not ready to share with her the property. The complainant also alleges that she lodged a complaint to this effect at Dwangwa Police Unit where they had moved to. The police failed to convince the family of the respondent the need to share the matrimonial property with the complainant.

She wants the Commission to assist her get her share of the matrimonial property which includes; one upright fridge, one TV Screen, one sofa set, five (5) beds and mattresses, three blankets, four suitcases, 42 bags of rice and two houses at Karonga, one ox-cart and two oxen.

Court records on the case were to be collected by Ms. Gertrude at a later date as courts were on a sit-in. The Commission intends to interview Thomson Mwentumba in Dwangwa, Nkhotakota.

7.1.3 Ruben Chingoli vs. Louis Chimtsanya & Others:

The complainant was stripped naked in the process of conducting a search. The complainant was doing an electrical installation at Seven Hills Company at Kanengo area where one of the respondents, Mr. Chimtsanya was a guard at the company. On this day, Mr. Siwa, a Chinese national and supervisor ordered Mr. Chimtsanya to search the complainant in a manner that he felt took away his dignity.

It was established that what the complainant alleged was true, as the respondent Mr. Chimtsanya had witnessed the ordeal. At the time investigations were being conducted, Mr. Siwa was reportedly out of the country.

The investigation is still on-going. The complainant later through a ZODIACK Broadcasting Station (ZBS) radio program, talked to Mr. Siwa’s supervisor who promised to compensate the complainant.

7.1.4 Sumaiyyah Kennedy vs. Bridgeview Hotel and Conference

It was alleged by the complainant that Mr. Singh who was her supervisor at Bridgeview Hotel in Lilongwe where she worked, persistently made sexual advances to the complainant, which she claimed to have rejected at all times. She alleged that her refusal towards those advances led to her job termination, as Mr. Singh reported to the General Manager, Mr. Irfan Sattar that she was performing poorly in her duties. She alleges that her termination was unfair because management did not hear her side prior to issuing her with a warning letter and later termination of her services.

At the time of writing the report the case was under investigation.

7.1.5 Jasson Mpapa and Others vs. St. John’s Catholic Secondary School

The Commission received a complaint from Jasson Mpapa aged 17, on behalf of others, alleging that they were unfairly dismissed from St. John’s Catholic Secondary School on the grounds that they had influenced other students from the same school to stage a demonstration, which resulted into vandalism of school property and other vehicles belonging to teachers and other citizens.

The Commission investigated the matter and gathered facts that the Board of Directors at the school had instituted an investigation into the matter and the findings of the investigations recommended the dismissed students be reinstated. It was further established that each student was fined MK4, 500.00 to repair the damages.

Investigation was concluded. The Commission recommended that St. John’s Secondary School should consider establishing a human rights club to empower students with knowledge on human rights and responsibilities. The report further recommends that teachers at the school should also be equipped with knowledge on human rights.
7.1.6 Maluwa Tembo (for Mwacha Chitenje & Others) vs. Genesis Maliseni & Another

The Commission received the complaint from Mr. Maluwa Tembo on behalf of Mwacha Chitenje, Mack Chitenje and Likisina Mwale. The complainant alleged that after the parents of the three stated children died, the respondents namely Genesis Maliseni and Nyadani Maliseni took control of the land that was left for the children. The complainant alleged that Mwacha and Mack Chitenje's parents left about one and a half acres of land while Likisina Mwale's parents left an arable land of about three acres. The respondents are alleged to have later sold the land. The complainant claimed that he was threatened by the respondents when he questioned them on the issue. The complainant further stated that he reported the matter to Kanengo Police Station where he was advised that the Police would not be able to take action on the same because the land in dispute was sold. The complainant indicated that he reported the matter to Village Headman Mvunguti who did not take action despite several reminders. The complainant asked the Commission to intervene in the matter in order for the children to regain ownership of the land left by their respective parents.

Investigations were concluded and the Commission recommended that the matter should first be referred to GVH Mvunguti in order for him to hear it. The report further recommended that the Commission should monitor the matter until it is conclusively dealt with by GVH Mvunguti.

7.1.7 Owen Machemba (for Minors) vs. The Families of Mr. & Mrs. Issa and Cassim

The Commission received a complaint from Mr. Owen Machemba of Traditional Authority Chowe in Mangochi district alleging that the families of Issa and Cassim, the respondents, arranged for the marriage of their children below the age of 18 years, who were students at Nsawa primary school.

The head teacher of the school intervened so as to break the marriage plans but both parents did not listen. The complainant felt that the children's rights were being violated hence reporting the matter to ensure that the children are protected from a forced and early marriage.

Investigations were conducted and the recommendation was to sensitize the community on dangers of forcing the girl child into early marriages. The parents were prevented from forcing the children into marriage.

7.1.8 Magret Mwale vs. Peter Kalipinde

The Commission received a complaint from Ms. Magret Mwale of Area 23, alleging that she had been abused in her marriage with respondent Mr. Peter Kalipinde. She stated that they have a 3 months old boy in their marriage and that her husband has extra-marital relationships and does not care about her anymore in the marriage. She further alleged that she suffers financial hardships as the respondent does not provide her with any money.

She further alleged that on 1st August 2013, the respondent assaulted her and left her with bruises on her body. She reported the matter to Namichimba Police Unit where they mediated over the matter but the respondent never improved.

She lodged the complaint with the Commission, with the hope that she would get money from her husband so that she returns to her home village in Dedza. She also wanted the respondent to adequately maintain their child's living expenses. The Commission began facilitating formal child maintenance with the parties.

7.2 Public inquiry on Gender-Based Violence in Nkhotakota.

In 2014 the Commission with funding from the European Union (EU) conducted a Public Inquiry on access to justice in cases Gender Based Violence. The Commission co-ordinated the Public Inquiry on Gender Based Violence at Chitontho Community ground in T/A Malengachanzi in Nkhotakota district, and the inquiry was held on 9th October, 2014. The inquiry was headed by Mzuzu High Judge Justice Madise who was also the Chairperson for a similar inquiry in Mbimba in 2013. During the inquiry witnesses gave testimonies on experiences of gender based violence such as wife battering; rape cases; wife abandonment; and issues of murder.

The main objective of the public inquiry was to establish the responsiveness and effectiveness of the justice system in Malawi with respect to cases of gender based violence in order to contribute to improved access to quality and responsive justice for all.

Stakeholders were drawn from the Malawi Police Service (Victim Support Unit); Nkhota-kota Magistrate Court, representative of Nkhotakota District Health Office, representative of Nkhotakota District Education office, officer from NICE, Ministry of Gender through the Social Welfare Office. These stakeholders shared their experiences and challenges as duty bearers in assisting victims of gender based violence.

The following were some of the findings of the public inquiry:

i. GBV and Education: testimonies submitted by one of the witnesses highlighted the effects of forced marriage on education. Witness stated that her father who is polygamous stopped supporting her education and told her to get married as her age mates were already mothers. The bursary system failed to support her too. She went to Department of Social Welfare under the Ministry of Gender where she was not assisted.

ii. Family abandonment as a form of GBV: One witness testified that her husband left her and stopped paying school fees for the kids and even providing food for the children. She complained at the chief who offered temporary assistance but the matter did not see the light of justice.

iii. Sexual violence: one witness testified that marriage advocates, chiefs and church authorities failed to resolve a case with his wife where she was refusing him his conjugal rights. The allegation the wife levelled against him was that he was promiscuous but it could not be proven. He claimed that in all the tribunals, his case was not taken seriously.

iv. Economic violence as a form of GBV: one witness testified that her husband sold matrimonial property with an aim of boosting their business and wanted to buy a maize mill in the process. Surprisingly, he never shared what he realized from the sale with his wife and went on to spend the money with mistresses. He ordered his wife to leave the matrimonial home as he wanted to marry another woman. In the process, the case failed to be settled at the marriage advocate level, village headman and Group Village Headman levels. Benga court finally ordered him to pay his wife K80, 000.00 which he did not comply with.

v. Forced marriages as a form of GBV: one witness testified that as she is an orphan, her aunt who happens to be her guardian, encouraged her to abandon studies because she did not have school fees and told her to get married instead. She reported this to the village Victim Support Unit who talked to her grandmother and aunt who ensured that she returned to school.
7.3 Human Rights Monitoring and Research

7.3.1 Study on Gender and Human Rights

The Commission conducted a research on Gender and Human Rights in Malawi, which was made possible with funding from the United Nations Development Programme (UNDP). The main objective of the study was to analyse the current situation of women in decision making processes, with particular emphasis on their political participation and leadership at community level. Its specific objectives were 1) to identify the extent to which women participate in decision making; 2) to assess the impact of cultural beliefs in women's decision making; 3) to establish the effectiveness of the primary justice system towards women; 4) to assess the extent to which women have access to information; and 5) to assess women representation in local governance structures.

The sample size was 1288 people of whom 1032 were household heads, 26 were key informants who included traditional leaders, health workers and head teachers, and 230 FGD participants who included the youth, women and men.

The study covered all the regions of Malawi with Nkhatabay, Mzimba, Karonga and Chitipa representing the Northern Region, Dowa, Kasungu, Nkhotakota, Ntcheu, Mchinji and Lilongwe in the Centre, Mangochi, Zomba and Machinga in the Eastern Region and Chiradzulu, Mulanje, Blantyre, Mwanza, and Nsanje in the Southern Region.

Findings of the study:

i. In both matrilineal and patrilineal areas and at community, district, and national levels, women's representation and participation in decision making positions is much lower than that of men despite interventions such as the 50-50 campaign and that people know that the few women who occupy such positions perform as well as men.

ii. There are cultural beliefs and practices that impact negatively on women's decision-making. The strong emphasis that the man is the head of the family permeates all spheres of society. As a result, decisions made by women are often not taken seriously. They have to be endorsed a male sometimes even when the decision affects the woman's SRH.

iii. The appointment of chiefs favours men over women.

iv. Malawi is a patriarchal society in which there is a strong cultural belief that women's place is the home and that their role is to support men.

v. Many women in Malawi do not access the primary justice system and for those who do, the system sometimes fails to provide the assistance they need. This is a serious problem particularly in the rural areas where the justice system is either non-existent or somewhat weak. This explains in part why many women victims of GBV do not know where to report.

vi. Often, marriage counselors side with men when women bring GBV cases to them, in part because, more often than not, the counselors themselves are men. The women have little voice also because of their poor education and limited access to resources.

vii. There is evidence that chiefs as well as community members are not conversant with gender related laws and GBV.

viii. Women and men have a negative perception of the justice system.

7.3.2 Monitoring of Traditional Leaders’ Progress on the Chiefs Declaration

The Commission was part of a monitoring team following the meeting in Mangochi in September, 2014 where the Chiefs Declaration was discussed and an action plan developed, that visited several traditional chiefs. The monitoring visits were organized by the Department of Nutrition and HIV/AIDS from the 15th to 23rd December, 2014 in Ntcheu, Dedza, Machinga, Mangochi, Blantyre, Mulanje, Chikwawa, Nsanje, Rumphi, Mzimba, Karonga, Chitipa and Nkhatabay Districts.

The team had discussions with 9 traditional leaders on various topics to analyze whether they are promoting the rights of the girl child and women, especially in the elimination of violence against women and girls as agreed in the Declaration and the Action Plan.

The traditional leaders informed the team of the following challenges they have faced and continue to face in enforcing the action plan:

i. Lack of enforcement of the by-laws developed by the chiefs;

ii. There is a huge gap in coordination in reporting between the District Council, traditional leaders and CSO's as all structures currently report to the DEC. The ADC's and VDC's therefore do not receive any feedback on various issues or activities being implemented within their areas including those targeting women and girls;

iii. Inadequate funding hinders the implementation of most activities; which also does not allow for them to reach out to all their subjects to sensitize them on the action points so that their subjects can in turn sensitize their communities.

7.4 Education, Information and Training activities

The Commission based on its objective of improving human rights knowledge in Malawi, implemented a significant number of activities aimed at promoting human rights through awareness, with a specific focus on rights of women and promoting gender equality.

7.4.1 Sensitisation Meetings on Human Rights

The Commission through the Gender and Women Rights Directorate conducted four sensitization meetings in Mangochi District between 9th and 11th July, 2014. The meetings were aimed at educating communities on, and promoting awareness and respect for, human rights of vulnerable groups, especially young girls and boys; who the Commission’s investigations revealed that they were at risk of engaging in early marriages. In this endeavor, the Commission partnered with the National Initiative for Civic Education (N.L.C.E) in organizing the meetings.
The objectives of the meeting were:

i. To raise awareness on the dangers of early marriages which are rampant among school children in the area
ii. To sensitize the communities on the right to education for both girls and boys
iii. To create awareness on relevant legislation on gender, women and child rights
iv. To promote knowledge, respect and understanding of Human Rights of vulnerable groups, especially women, girls and children.
v. To equip communities with skills that would help them identify violation of human rights, as well as skills that would help them defend and claim their rights.
vi. To enlighten the communities on the remedies available and institutions that provides assistance when rights are violated.

The meetings targeted traditional leaders, members of Chowe Community Based Organisation, teachers and the school children of Chowe and Matamanda Primary Schools in Traditional Authority Chowe of Mangochi District. The traditional leaders included Group Village Head (GVH) Chowe, Village Head (VH) Salanje, VH Mamu, VH Wasili, VH Liundi, VH Bwanali, VH Masache, VH Chowe II, VH Chowe III, VH Matamanda, and VH Nsume. In total, 300 pupils and 20 CBO members were sensitized during the awareness meetings.

7.4.2 Sensitization Meetings on the Deceased Estates (Wills, Inheritance and Protection) Act:

In August, 2014, Daughters of Mary Immaculate (DMI) Sisters based at Kagwa Parish in Lilongwe took an initiative and asked the Commission to partner with them to train and sensitize women on human rights. 60 women were sensitized on the application of the Deceased Estates (Wills, Inheritance and Protection) Act as the majority of them were unaware of the provisions of the Act.

The objectives of the meeting were to:

i. Sensitise the women on the Deceased Estates (Wills, Inheritance and Protection) Act;
ii. To equip the women with skills that would help them identify violation of human rights, as well as skills that would help them defend and claim their rights;
iii. To enlighten the communities on the remedies available and institutions that provides assistance when rights are violated.

During all these meetings the women were also enlightened on the role and mandate of the Commission as a constitutional body, human rights in general and gender and women rights in particular. As a result of these meetings, three of the women sensitized during that event have since lodged their complaints with the Commission which are under investigations.

7.4.3 Sensitization Meetings on Human Rights in Schools in Salima

The Commission undertook two sensitization meetings at Nakondwa and Kapira Primary Schools in Salima District from the 14th to 16th October, 2014. About 200 students were sensitized on human rights and their attendant corresponding responsibilities in general and in particular the students were sensitized on women rights and gender equality.

The overall objective of the meeting was to sensitize students on human rights and responsibilities with emphasis on early marriages and other gender related issues. The specific objectives of the meeting were:

i. To raise awareness on the dangers of early marriages which are rampant among school children;
ii. To sensitize the communities on the right to education for both girls and boys;
iii. To create awareness on relevant legislation on gender, women and child rights;
iv. To promote knowledge, respect and understanding of Human Rights of vulnerable groups, especially women, girls and children;
v. To equip communities with skills that would help them identify violation of human rights, as well as skills that would help them defend and claim their rights; and,
vi. To enlighten the communities on the remedies available and institutions that provides assistance when rights are violated.

Plans are underway to scale this activity in 2015 so as to reach more educational institutions such as secondary schools and colleges.

7.4.4 Sensitization Meetings on Human Rights in Karonga

The Commission conducted whistle stop tours in Lupembe, Ngala, Nyungwe, Wowwe and Uliwa trading centres in Karonga district in December, 2014. The aim of these tours was to sensitize communities on gender based violence and taking a lead in holding duty bearers accountable. The initiative reached about 3000 people in the targeted areas. The communities were sensitized on gender based violence and the need to hold duty bearers accountable. These activities were part of the events the Commission had planned to commemorate Sixteen Days of Activism for 2014 which is celebrated from 25th of November to 10th December each year.

7.4.5 Awareness meetings on the Gender Equality Act (GEA)

In 2014, the Commission with funding from UNFPA carried out awareness and sensitization meetings on the GEA. The objectives of the meeting were: to raise awareness on the GEA; to increase knowledge on the implementation of the Act and to introduce the Implementation and Monitoring Plan on the Act.

The meetings were conducted as follows:

7.4.6 Awareness meetings for the Malawi Police Service (MPS) in the Northern Region

The Commission organized awareness meeting on the Gender Equality Act (GEA) for Police officers in the Northern region. The awareness meetings were conducted on 1st and 3rd October 2014 in Mzimba and Karonga districts respectively. The awareness meeting targeted Investigators, Prosecutors, and Victim Support Unit officers from different police units and posts under the two police stations. 42 Police officers and 6 media personnel were sensitised, and out of these 32 were male and 16 were female.

The program targeted Mzimba and Karonga district as pilot districts before carrying out the activity to other districts in the country.

7.4.7 Awareness meetings on GEA for Magistrate Courts in Northern Region

The Commission carried out a series of meetings targeting Magistrates Courts in the Northern region from 20th to 31st October, 2014. The awareness meetings were conducted in Mzimba, Nkhata Bay, Rumphi, Karonga and Chitipa districts. Mzuuzu High Court Magistrates and Court clerks were also targeted. During the meetings 26 Magistrates; 39 Court Clerks; 20 Court Marshalls; 5 Court Administrators, and 9 media personnel were sensitized on the Gender Equality Act of 2013.

7.4.8 Meetings with the District Executive Committees on the GEA, 2013

The Commission in 2014 engaged the Local Government in its effort to ensure the implementation of the GEA of 2013. This was a continuation of the series of meetings that started in 2013 targeting District Executive Members (DEC), especially those dealing with issues of gender and women rights. On 22nd January, 2014 a meeting was held at Mzimba District Council for DEC members.

From the 26th to 27th November, 2014 the Commission organised similar meetings for DEC members for Mzuuzu City Assembly and Rumphi District Council. The meeting targeted heads of sectors and departments from different institutions and organizations who are members of the District Executive committee. In total 55 DEC members were sensitised on the GEA.

In all the meetings with the Police; Magistrates; and the Local Government the following recommendations were made:

i. There is need to widely popularize the GEA and other gender related laws especially at grass root level;
ii. The meetings recommended that the Commission should involve other stakeholders such as health workers, social welfare and non-state actors in the dissemination and enforcement of the GEA.
iii There is need for the Rules and Regulations to be developed by the Ministry of Gender to compliment the Act.
iv The GEA should be translated into several languages such Tumbuka, Lomwe, Yao and Chichewa so as to benefit a wider spectrum of the society. This could be achieved with other stakeholders such as local NGOs.

7.4.8 Workshop with the Private Sector on the GEA, 2013.

The Commission planned and held a workshop for the Private Sector to discuss the modalities of the implementation and enforcement of the Gender Equality Act within the private sector. The workshop was held on Friday, 28th October, 2014 at Sunbird Capital Hotel. 12 Organizations and 6 media personnel attended the workshop.

During the workshop the following recommendations were made:

i. GEA should be disseminated to both public and private institutions and sensitize them on the same;
ii. Employers in the Private Sector should be sensitized on the Act. This sensitization should include a topic which will catalogue all the bad practices practiced in work places.
iii. There is need for continued civic education on gender equality with the aim of changing people’s mindset regarding the gender discourse. Men should be brought on board during such activities to ensure this is not about women but men as well.
iv. The Commission should ensure that all institutions both public and private have put in place gender related policies.
v. The meeting recommended that the Commission should spearhead the development of Sexual Harassment Policies at workplaces and should take an active role in what message such policies should carry so that they are standard and easy to apply.
vi. The Ministry of Gender, Children, Disability and Social Welfare to take into account views and recommendations made by the participants during the drafting of the rules and regulations for the Act.

The specific objectives of the workshop were:

i. To brainstorm on the type of manual to be developed;
ii. To orient participants on the process on manual development;
iii. To share an overview of the Gender Equality Act of 2013;
iv. To share tasks on the manual development;
v. To chart the way forward for the manual development process.

At the time of writing this report, the manual was being finalized for pretesting.


The Commission, in 2014, completed the drafting of the Implementation and Monitoring Plan on the Enforcement of the Gender Equality Act of 2013. The compilation of the plan was done in collaboration with stakeholders such as the MoGCDSW; the Judiciary; Media Council of Malawi; National Assembly; Malawi Human Rights Resource Centre; NGO-GCN; UNFPA; UN Women; MCTU and the Malawi Police Service. At the time of writing this report the draft plan had been submitted to the MoGCDSW for their final inputs.

The development of this plan was necessitated by the passing of the Gender Equality Act in February, 2013 by Parliament and the subsequent mandates given to several stakeholders in the Act. Such stakeholders included THE COMMISSION, MoGCDSW, Ministry of Health, the Judiciary, Ministry of Justice and Constitutional Affairs among others. The Plan intends to have a harmonized and systematic implementation and monitoring the enforcement of the Gender Equality Act among stakeholders as this would eliminate the possibilities of having duplicates programs on same and related issues.


In order to further popularize the Gender Equality Act, 2013 efforts were made to design and develop posters based with the aim of bringing awareness to the general public on the same. Copies of the Gender Equality Act, 2013 were also disseminated to communities in Karonga and Mzimba districts in September, 2014 in a bid to popularize the Act. The Commission intends to have the Act translated into vernacular languages to reach out to a wider community who are unable to read in English.

7.5 Networking with Stakeholders

The Commission held meetings with various stakeholders to facilitate partnerships and discuss issues of gender and women’s rights. The meetings aimed at informing stakeholders of the establishment of the Gender and Women’s rights Directorate of the Commission so that the existing working relationships could be sustained and enhanced. The Commission initiated some of the meetings and was also invited to some by other stakeholders.

7.5.1 UN Women on the National Gender Conference (NGC)

The Commission actively participated in the NGC which was held from the 26th to 28th November, 2014 in Blantyre. This was a continuation of a programme that began in 2013 with the aim of promoting gender equality in Malawi. With that background, the positioning of gender equality across national priorities and plans needs to be driven and supported in a coordinated manner and the national gender machinery is critical in this regard.
The conference in 2014 addressed issues of passing key legislation such as the Marriage Bill, Land Bill as well as the implementation and dissemination of the Gender Equality Act. The Conference also provided a platform for strategizing on current and pivotal gender development concerns.

7.5.2 Meeting to discuss Role of Paramount Chiefs in Human Rights Based Development
The Commission in collaboration with UN Women organized a two day meeting in Mangochi at Nkopola Lodge with Paramount Chiefs on the 'Role of Paramount Chiefs in Human Rights Based Development' from the 16th to the 17th of September, 2014. The meeting originated from the Chiefs' Declaration of Commitment that was signed on the 30th of October, 2013, which resulted from a High Level Taskforce on Women, Girls, Gender Equality, HIV and AIDS for Eastern and Southern Africa that paid a visit to Malawi from 28th October to 2nd November, 2013. The Taskforce convened a meeting with seven Paramount and Traditional leaders as they play a vital social role in their communities and in a society at large in Malawi.

7.5.3 Taskforce on Political Empowerment of Women
The Commission attended a meeting organized by the Ministry of Gender, Children, Disability and Social Welfare with various stakeholders who promote political empowerment of women in Malawi on 22nd November, 2014 at Mount Soche Hotel in Blantyre. The purpose of the meeting was to consolidate resolutions made at the 50:50 Post-mortem Conference that took place in August, 2014, and see how best those recommendations can be positioned in the on-going debates on law reforms.

7.5.4 Workshop on the Enactment of the Abortion Law
The Commission attended a workshop on Abortion Law at Golden Peacock in Lilongwe. The workshop was conducted by IPAS in September, 2014 and focused on whether Malawi should legalize abortion or not. The workshop touched on these key areas:

i. Abortion as a right especially where self-determination is applied;
ii. Sexual and Reproductive Health Rights provided for in various laws including the Penal Code and the Gender Equality Act, 2013 and it was agreed that the GEA,2013 is silent where abortion is concerned and that currently in Malawi, abortion is legally allowed only where the life of the mother is at risk;
iii. The International and National legal framework on SRH rights;
iv. The Special Law Commission on Abortion Laws were still conducting consultations at the time of the meeting but the meeting was informed that they had come up with some resolutions including one that states young people may seek abortion services only with parental consent.

7.6 Gender and Women’s Rights Thematic Committee.
In line with the activities that the commission had already implemented under the UN Women project in 2013, the Commission held a quarterly meeting for the Gender and Women rights thematic Committee. This meeting took place at Mpatza Lodge in Salima District on 14th February, 2014.

The objectives of the meetings were as follows:

i. To provide a progress report on implemented activities and assess any other progress that had been made by the committee;
ii. To analyze the challenges encountered with regards to implementing the committee's activities; and,
iii. To chart the way forward for the Committee.

The Committee members are from the following organisations: Women and Law in Southern Africa (WILSA), the Judiciary, Ministry of Gender, Children and Social Welfare, Church and Society of Livingstonia Synod, Catholic Commission for Justice and Peace (CCJP), Malawi Human Rights Resource Centre (MHRRC) and Women’s Legal and Resource and Centre (WOLREC). At the time of writing this report the Commission had submitted an Annual Work plan for 2015 to UN Women.

7.7 Promoting women participation in the 2014 tri-partite elections
The Active Learning Centre in liaison with WOLREC trained 40 people working in gender related areas to train 2000 women before the 2014 tripartite elections in 21 districts in Malawi. The Commission trained 25 women who were aspiring to be candidates during the Local Government elections in 2014 between October, 2013 and March, 2014. Participants came from various political parties: MCP, DPP, MAFUNDE, NASAF, PP, PETRA and PPM. The women were trained in Gender and Local Government; Local Government and the Legal Framework; and, Communication skills and Politics.
Chapter Eight:
Corporate Services

8.0 Introduction

The Corporate Services Directorate provides support for smooth operations of the Commission. Human Resource Management, general administration including project management and financial management are some of the services the Directorate provides. The following are some of the activities that were coordinated and implemented by the Directorate in 2014.

8.1 Commissioners’ Meetings

Regular meetings of the Commissioners were held to provide strategic direction to the Secretariat. The meetings reviewed progress made in the implementation of the 2014 planned activities and provided a platform to discuss the status of the Human Rights situation in the country. In 2014, 5 Regular Meetings of Commissioners and 2 Extra Ordinary Meetings of Commissioners were held. In addition, the Commissioners continuously held meetings with respective Directorates and Committees of the Commission.

8.2 Commissioners’ 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. Commissioners Reverend Dr. Z. Kawalala and Mr. M. Chilenga attended the 25th Session of the Human Rights Council and the 27th Annual Meeting of the International Coordinating Committee (ICC) of National Human Rights Institutions held in March, 2014. The meetings discussed issues of human rights experienced in member states. The Commission, being one of the few NRHIs with an "A" status has talking rights in such meetings.

8.3 Review of Accreditation to “A” Status by the ICC

The Commission attained “A” Status Accreditation in 2007, meaning that it fully complied with the Paris Principles. To date the Commission still enjoys full membership of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) and independent participation rights at the UN.
Human Rights Council and its subsidiary bodies. The Commission’s ‘A’ Status is periodically reviewed and the review process for Malawi continued in 2014 and the determination of the outcome was differed to 2015.

8.4 Human Resources Management

8.4.1 Staff Recruitment

The Commission, through Upper Appointments and Disciplinary Committee, conducted interviews in January and October 2014 and the following members of staff were recruited as per the Table 8.2 below:

<table>
<thead>
<tr>
<th>No</th>
<th>Position filled</th>
<th>No of Position</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Director of Corporate Services</td>
<td>1</td>
<td>Mr. Winston Mswatulirwa</td>
</tr>
<tr>
<td>2</td>
<td>Director of Civil and Political Rights</td>
<td>1</td>
<td>Mr. Peter Chisi</td>
</tr>
<tr>
<td>3</td>
<td>Director of Economic, Social and Cultural Rights</td>
<td>1</td>
<td>Mr. Harry Mgochi</td>
</tr>
<tr>
<td>4</td>
<td>Regional Human Rights Coordinator</td>
<td>1</td>
<td>Mrs. Chisomo Kafulu-Kumwenda</td>
</tr>
<tr>
<td>5</td>
<td>Public Relations Officer</td>
<td>1</td>
<td>Mr. Chimwejemwe Manyozo</td>
</tr>
<tr>
<td>6</td>
<td>Information and Technology Officer</td>
<td>1</td>
<td>Mr. Majama Jere</td>
</tr>
</tbody>
</table>

The Commission through the Lower Appointments and Disciplinary Committee conducted interviews and recruited Ms. Fatima Kachingwe as Receptionist under Corporate Services Directorate.

8.4.2 Staff Resignations

During the year, the Commission had one officer leaving through resignation. Ms. Getrude Samati, resigned from the position of Child Rights Officer.

8.4.3 Capacity Development

8.4.3.1 Short Term Training

The policy of the Commission is to that capacity of staff is continuously developed training. A number of officers were sent on short term training courses and workshops on human rights as detailed in the Table 8.3 below:

<table>
<thead>
<tr>
<th>Course</th>
<th>Officer</th>
<th>Date</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child Rights Classroom and School Management</td>
<td>Mr. George Kondowe</td>
<td>14 - 28 March</td>
<td>Zambia</td>
</tr>
<tr>
<td>Judicial Enforcement of Social-Economic Rights</td>
<td>Mr. Stuart Mvula</td>
<td>5 -9 May</td>
<td>South Africa</td>
</tr>
<tr>
<td>Human Rights Development with focus on Children Rights</td>
<td>Mr. Jeremiah Mpaso</td>
<td>27 July – 22 August</td>
<td>Belgium</td>
</tr>
<tr>
<td>Access to Justice for Children in Africa: Optional Protocol to the Convention on the Rights of the Child on Communication Procedure</td>
<td>Mr. George Kondowe</td>
<td>3 - 7 October</td>
<td>Ethiopia</td>
</tr>
<tr>
<td>Regional Blending Learning Foundation Course on the Role of NHRIs in Human Rights Protection and Promotion in Africa</td>
<td>Mr. Victor Khwima and Ms. Grace Jere</td>
<td>10 -14 November</td>
<td>Tanzania</td>
</tr>
<tr>
<td>Regional Consultation on HIV and Human Rights</td>
<td>Mrs. Grace Malera</td>
<td>13 -15 November</td>
<td>South Africa</td>
</tr>
</tbody>
</table>

8.4.3.2 Long-Term Training

During the year, 2 officers were offered scholarships to study Masters’ degree programs as per Table 8.4 below:

<table>
<thead>
<tr>
<th>Course</th>
<th>Officer</th>
<th>Post</th>
<th>Sponsor</th>
<th>Place</th>
</tr>
</thead>
<tbody>
<tr>
<td>Masters in Business Administration</td>
<td>Mr. Frank Chisambula</td>
<td>Chief Human Resources Officer</td>
<td>Irish Aid</td>
<td>Ireland</td>
</tr>
<tr>
<td>Master of Science in Human Rights</td>
<td>Ms. Priscilla Thawe</td>
<td>Deputy Director of Child Rights</td>
<td>Irish Aid</td>
<td>Ireland</td>
</tr>
</tbody>
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8.5 The 2014 Human Rights Commemoration Day

Malawi celebrated the 2014 Human Rights Day Commemoration under the theme: “Human Rights, Responsibilities and Accountability: Holding Duty Bearers Accountable”. The Commission lined up a number of activities to mark the human rights day commemoration. The main activity was held on 10th December, 2014 at the Bingu International Conference Centre (BICC) where a National Conference was held. About 200 delegates attended. The Commemoration was presided over by the State President of the Republic, Professor Peter Arthur Mutharika. The main event at BICC on the 10th December, 2014 took the form of a high level accountability engagement forum and was attended by policy makers and members of the executive drawn from a wide range of duty bearers. Furthermore, experts made their presentations on various human rights issues.

During the commemoration, the Commission engaged key duty bearers especially the state on human rights accountability; high level panel discussion on police reforms; video documentary on human rights accountability was produced and mounted exhibitions together with key state holders.
Human Rights day commemoration
8.6 Library Services

In order to ensure that members of staff and general public were being kept abreast with current socio-economic and political information, the Library continued subscribing to local newspapers, gazettes and internet to access information. The Library also ensured availability of drafted bills that were scheduled to be tabled in Parliament. Furthermore, the Library in the year 2014 acted as a collection point by various Community Based Organizations (CBOs) for FUKO newspaper, a project publication initiated by Nation Publications Limited which also highlights development issues.

8.7 Procurement Services

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 THE COMMISSION 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 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 2014 the Commission through the IT section undertook the following activities updated 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. The automation process includes the installation of both wired and wireless Local Area Network and Internet.

8.9 Public Relations

Communication between the Commission and the general public in the year 2014 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:

8.9.1 Press Releases

In 2014 the Commission released the following Press Releases:

On 24th May, 2014 the Commission issued a statement on its position on the Presidential Decree Purporting to Nullify the On-Going Elections, Stopping the Electoral Commission from Carrying on with the Elections and Ordering a Re-Run. The Commission issued the statement on the presidential decree issued by Her Excellency Dr. Joyce Banda, purporting to nullify the May 2014 Tripartite Elections, to stop the Electoral Commission from further administering the process, and ordering a re-run of the elections. The Commission observed that the President does not have power to call off counting of votes and determination of results of the elections. The President does not have power to call for an appoint a date for fresh elections.


A statement on Dismissals or Removals of Public Officers from Public Office and the Need to Ensure the De-politicisation of the Public Service and Preservation of Its Integrity was also issued. The press statement built on its previous pronouncements on the issue of appointments and dismissals of officers of public institutions by the Executive. The Commission made its observations in light of the developments relating to the removal of the Commissioner General and Deputy Commissioner General of the Malawi Revenue Authority (MRA). The Commission called upon the administration of His Excellency Professor Arthur Peter Mutharika, the President of the Republic of Malawi, to desist from actions or omissions which may be seen to be politically motivated in dealing with dismissals or removals of officers from the public service.

On 14th August 2014, the Commission issued a statement on the Malawi Human Rights Commission’s role as amicus curiae (Friends of the court) in the Balaka defilement case and expression of concern on the court’s decision on the matter. The Commission took note of the developments relating to the allegations of the abduction and sexual abuse of 6 girls under age of 16 by a 40 year old man. The Commission noted with concern that following a finding of guilt and the conviction of the accused person on both counts of defilement, on 7th August, 2014, the court, on 12th August, 2014, imposed lenient sentences of 42 and 36 months imprisonment with hard labour to run concurrently.

Press statements on the Commemoration of the International Human Rights Day and Observance of 16 Days of Activism Against Gender-Based Violence were issued in November and December, 2014.

On 29th December, 2014, the Commission issued a press statement on Position on Industrial Actions and Strikes and the Impact on Human Rights. It was noted with concern the spate of industrial actions and strikes by employees of public sector organizations, some of which were taking place outside of the context of any negotiations, and their legality was questionable. In particular the Commission noted the grave consequences the industrial actions and strikes have on the delivery of public services, which in turn pose serious negative implications on the enjoyment of human rights.
8.9.2 Press Briefing and News Coverage
The Commission continues to share information through press briefings and responding to questionnaires by the Media.

A press briefing on the 2014 Tripartite Elections Monitoring Report was held on 18th December, 2014 at Capital Hotel in Lilongwe. During the press briefing the Commission declared that the 2014 Tripartite Elections were not free, fair and credible.

The Commission provided information on request by members of the media through questionnaires and interviews on matters of national interest. In addition, various messages on human rights were aired on radio and television stations.

8.9.3 Sports Commentary
As part of raising human rights awareness, the Commission partnered with Trade Kings and co-sponsored the football commentary between the country’s major football clubs between Big Bullets and Moyale Barracks Football Clubs. The Human Rights Day commemoration message was played during commercial breaks which to some extent raised awareness especially among the football fans.

8.9.4 Broadcasts of the High Level Panel Discussions
High level panel discussions were conducted in Blantyre, and broadcasted live Zodiac Broadcasting Station. The discussions focused on Business and Human Rights, Education and Human Rights and Police Reform Agenda. The Panel discussions were highly patronized. Members of the public participated through text messages. A documentary on the right to education and the right to health was produced to facilitate holding duty bearers accountable in the area of health and education.

8.10 Joint Annual Work Plan with United Nations Agencies
On 16th October, 2014, the Commission and United Nations Malawi signed a Memorandum of Understanding (MoU) that enhances cooperation and ensures collaborative technical and financial support from UN Agencies in Malawi. The MoU facilitated the development of Joint Annual Work Plan for 2015 aimed at harmonized support by UN Agencies to the Commission. The Joint Annual Work Plan for 2015 has been developed according to human rights thematic areas the Commission is working on to ensure effective implementation of activities. The joint plan has pooled together resources from various UN agencies for the cause of the protection and promotion of human rights in Malawi.

8.11 Challenges
In 2014, the Commission continued to face the following major challenges in its operations:

8.10.1 Shortage of office space
The Commission has inadequate office space both at headquarters and regional offices. There are 68 officers against thirty-four office rooms. This has resulted into sharing of offices by senior members of staff and lack of respect of the right to privacy for complainants.

8.10.2 Inadequate funding
Perpetual low annual funding from Government affected the operations and implementation of the activities of the Commission in such that some activities were not fully carried out. This negatively affected the delivery of services of the Commission and the fulfillment of its mandate.

8.10.3 Accessibility of the Commission
The Commission opened one regional office in the south to effectively reach out to the local populace in the remote areas of the southern and eastern region. There is need to open a Regional Office in Mzuzu to enhance the accessibility of the Commission’s services in the Northern Region. The Commission received approval from Government to set up the northern region office in 2013. However, to date the office has not been set up due to low funding from government.

8.10.4 Shortage of Equipment and Furniture
Some of the Commission’s officers do not have office furniture and appropriate equipment to effectively discharge their duties, while in some cases, equipment such as computers is very old.

8.10.5 Shortage of staff and inadequate trained personnel is one of the major challenges on the output and delivery of human rights work, for example, delays in resolving reported cases of violations of human rights. Further, the issue of inadequate trained personnel to competently handle specialized areas of human rights promotion and protection such as investigative hearings, alternative dispute resolutions, human rights based education and training methodology, among other areas, affected service delivery.

8.11 Financial Management

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Chapter Nine: 
Conclusion

In conclusion, the 2014 Annual Report of the Commission covers the activities that the Commission undertook in the period January to December 2014. 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 2014, the Commission undertook a considerable amount of work in the area of complaints handling. A total of 358 complaints were registered signifying a 30.6% decrease from the 516 complaints that were registered in 2013. The Commission attributes this decrease to: the multiplicity of actors that are engaged in human rights violations complaints handling; a rise in violations that go unreported; inaccessibility of the Commission; lack of knowledge on the part of victims; among other reasons. This trend makes it imperative for the Commission to strengthen its human rights civic education activities, including through relevant players particularly at district and village levels, as well as strengthening its network for registration of complaints of human rights violations.

It is important to note that in 2014, 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 2013. 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, 2014 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.