Honourable Richard Msowoya, MP.
Speaker of the National Assembly,
Private Bag B362,
Lilongwe 3.

Dear Right Honourable Speaker, Sir,

The Human Rights Commission (the Commission), has the pleasure and honour to present to Parliament its 16th 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 2015, 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.

............................................................

Mr. Justin Dzonzi
CHAIRPERSON
ACKNOWLEDGEMENTS

The compilation and production of the 2015 Annual Report of the Commission is a result of the hard work of the staff members' task force, comprising of: Mr. Wycliffe Masoo, Mr. Peter Chisi, Mr. Tiwonge Kayira, Ms. Tinkhani Khonje, Mr. George Kondowe, Ms. Grace Jere Mtawali, Mr. Frank Chisambula and Mr. Topkings Nyirongo. The contribution and efforts of this task force are greatly appreciated.

Special credit goes to Mrs. Grace Malera, the Executive Secretary of the Commission, for her input in the compilation of the Report. Commissioners Rev. Patrick Semphere, Mrs. Gertrude Lynn Hiwa SC and Mr. Dalitso Kubalasa, who were specifically assigned with the task of supervising the compilation of this Report, are also specially recognised for their contribution.

The Commission would also like to express its appreciation to all the stakeholders and partners that contributed to its work in 2015. 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, to Civil Society Organisations, and the Media, who continue to be strategic allies of the Commission.

Fourth, to international organisations, including, the Network of African National Human Rights Institutions, (NANHRI), the International Coordinating Committee of Promotion and Protection of Human Rights, (ICC), the African Commission on Human and Peoples’ Rights and the Office of the United Nations High Commissioner for Human Rights, (OHCHR), who rendered valuable support to the Commission.

Last but not least, the Commission is greatly obligated 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 2016, and beyond.
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Commissioner Mr. Justin GK Dzonzi: is the Chairperson of MHRC. He is a licensed legal practitioner and a member of the Bar Association of Malawi. He holds an LLB (Hons) from the University of Malawi and has practiced law for 14 years under the firm of Kainja & Dzonzi Attorneys at Law.

As a lawyer, he has a wealth of experience in providing consultancy services ranging from public policy formulation to legislative drafting in a diverse field of sectors such as energy, water, irrigation, finance, electoral laws and wildlife conservation.

He is also a human rights attorney with practical experience in championing the recognition, respect, protection and promotion of human rights in Malawi by virtue of being a founder of Justice Link, an NGO that specialises in: legal and governance advocacy; accessibility to justice by the vulnerable and disadvantaged sectors of the society; provision of legal literacy programmes; and provision of pro bono legal services to indigent litigants.

Through the civil rights platform he has been at the helm of the human rights movement in Malawi through active involvement and leadership in the Human Rights NGOs umbrella body, the Human Rights Consultative Committee.

Commissioner Mr. Benedicto Kondowe: holds a Masters Degree in Development Studies with Honours, obtained from the University of East Anglia, United Kingdom, a Post Graduate Degree in International Human Rights, from Fahamu, Oxford University, and a Bachelors Degree in Education, Humanities from University of Malawi. He has previously worked with Centre for Human Rights and Rehabilitation, Catholic Relief Services, Malawi Country Programme, and the Royal Norwegian Embassy. He is currently the Executive Director for Civil Society Coalition for Education.

He is also the Trustee Chairperson for the Council for Non-Governmental Organisations in Malawi (CONGOMA), and the Vice Chairperson of the African Centre for Conflict Management and Transformation (Harare, Zimbabwe). He is Commissioner responsible for the Directorate of Civil and Political Rights and also serves as a member of the Upper Appointments and Disciplinary Committee. He also serves in the Disability and Elderly Rights Directorate.

Commissioner Mr. Dalitso Kingsley Kubalasa: is an Economist by profession. He has over 15 years of experience in Development and Economic Policy Analysis and Management. He holds an advanced Master of Arts Degree in Development Evaluation and Management (with Distinction), from the University of Antwerp in Belgium.

He also holds a Bachelor of Science Degree in Agriculture (Agricultural Economics), from University of Malawi. He is the Executive Director for the Malawi Economic Justice Network (MEJN), and he serves on several
Boards within Malawi and the region, that includes the Small and Medium Entrepreneurship Development Institute (SMEDI) and the Tax Justice Network-Africa (TJN-A) Boards.

He is also serving as a Secretary General for the Southern Africa People’s Solidarity Network (SAPSN), a regional network of social movements in SADC. He is responsible for the Economic, Social and Cultural Rights, and the Child Rights Directorates; and Chairperson for the Commission’s Finance and Audit committee.

Commissioner Reverend Patrick Semphere: is a Communication and Media Specialist with over twenty years’ consulting experience in Kenya, Lesotho, Swaziland, Tanzania, Zambia and Malawi.

He also consults widely for UN agencies and has managed donor-funded projects with World Bank, British High Commission, Commonwealth Education Fund, Canadian International Development Agency, Family Health International, Norwegian Church Aid and National Aids Commission.

For 8 years, he was the National Director for Trans World Radio (Malawi). As Chairperson of the Media Council of Malawi (2007 to 2014), Commissioner Reverend Semphere championed professional ethics in the media industry. He holds a Master of Arts in Intercultural Studies from Fuller Theological Seminary, Pasadena, USA and a Bachelors’ Degree from the University of Malawi.

One of his landmark accomplishments was when he moderated the first-ever 2014 presidential debates in Malawi. He has served on the National Integrity Committee spearheading the fight against corruption; is a trustee of the Media Council of Malawi and also a board member of: Evidence Action; Eye of the Child; Pentecostal Life University; and EDH Foundation. Commissioner Reverend Semphere is an ordained Pastor of Word Alive Church where he also serves as General Secretary.

As a Commissioner, he is the focal Commissioner of the Civil and Political Rights Directorate; oversees the Current Affairs Committee and the northern region establishment and also sits on the Upper Appointments and Disciplinary Committee.

Commissioner Mrs. Bertha Sefu: is an educationist by profession. She brings to the Commission twenty plus years of experience on issues of human rights. She holds a Master of Science Degree in Strategic Management from University of Derby United Kingdom and Diploma in Education from Chancellor College, University of Malawi.

She has been trained in NGO Management with University of Wye, United Kingdom. She has previously worked as a Lecturer in Teacher Training Colleges, was Curriculum Developer with Domasi Institute of Education (MIE), and has authored some books for Primary education, Chief Examiner and Chief Marker with Malawi Examination Board (MANEB), for Teacher Training Colleges, Programme Manager for MIDEA responsible for Civic and Voter Education, Programme Manager for Malawi Council of Churches responsible for Gender, HIV and AIDS, Economic Justice and Family Life Programmes, National Programme Coordinator for 50:50 Campaign Programme with Ministry of Gender, Community Services and Children Affairs which was responsible for ushering the highest number of women members to Parliament.
Mrs Sefu has received various trainings in advocacy, Gender Mainstreaming and Human Rights among others. She has been Board Member for Malawi Accountants Board, Chairperson for MASAF III Board, NICE Board Member responsible for Programmes, Chairperson for MANET+ Board, Member of Southern Africa People Living with HIV/AIDS (NAPSAH+), and a long-time member of Global Network for People Living with HIV/AIDS (GNP+) Netherlands. Commissioner Sefu is responsible for the Commission’s Gender and Women’s Rights Directorate, the Complaints Handling Committee, and Southern Region Office, as well as a member of the Upper Appointments and Disciplinary Committee.

Commissioner Mr. Baldwin Chiyamwaka: is a broad – skilled person: an experienced leader and manager; development practitioner; communications specialist; educationist, and researcher.

He previously worked as Deputy Country Director for VSO International Malawi Country Office; Executive Director for Media Council of Malawi (MCM); Communications Officer for World Vision Malawi; Principal Information Officer in the Malawi Government Ministry of Information, and secondary School Teacher and Teacher Training College Lecturer in the Malawi Ministry of Education.

He also worked as Consulting Senior Researcher at the Institute for Security Studies (ISS) Headquarters in Pretoria, South Africa. He currently, works for UNICEF Malawi as Consulting Technical Advisor on Civil Society Engagement and Social Accountability. Commissioner Chiyamwaka also serves in various boards.

He is currently, vice chairperson of Farm Radio Trust (FRT), Trustee of Association of Business Journalists, Chairman of LC Pharmacies Board of Directors, and Chairman of Lilongwe Pentecostal Church Private Schools Board of Directors. He also served as Executive Council member for the World Association of Press Councils. He holds a Master of Business Administration (MBA), from the Cyprus Institute of Marketing, Nicosia, Cyprus; Master of Arts (MA) in Communication Studies and Elderly Rights and Corporate Services Directorate.

Commissioner Mr. Stephen Nkoka: is an Economist by profession. He holds a Masters Degree in Economics and Social Studies, a Bachelors Degree in Social Sciences, a University Certificate in Accounting and other Professional Certificates in Civic and Voter Education, Strategic Planning, Project Cycle Management, Performance-based Financing (PBF), Results-Based Management, Monitoring and Evaluation, Procurement, etc.

Currently, he is working as a Monitoring and evaluation Manager at the Christian Health Association of Malawi (CHAM). Previously, he worked as a Programme Manager for the National Initiative for Civic Education (NICE), Deputy Programme Coordinator for 4th GoM/ EU Micro-projects Programme, Deputy Head of Programming, Monitoring, Evaluation, and Learning for Catholic Relief Services, and Aid Coordinator for JICA/Malawi. He brings more than 19 years
of professional and practical working experience into the Commission. He is a Commissioner responsible for Women’s Rights and Gender Directorate, and a member of the Finance and Audit Committee.

Commissioner Mrs. Gertrude Lynn Hiwa, SC.: is the Law Commissioner, a position she has held since June 2008. She is a Human Rights Commissioner by virtue of her position as Law Commissioner. She brings to the Commission over 23 years’ experience in diverse fields of law including: legislative drafting, civil litigation, prosecution and giving legal advice.

She holds an LLB (Honours) Degree obtained from 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. She also served as an ex-officio member on various statutory bodies and as 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 Directorate. 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 Mrs. Martha Chizuma Mwangonde: is a licensed legal Practitioner and a member of the Bar Association of Malawi, Women Lawyers Association of Malawi and Women Judges Association of Malawi (founding member and ex-official). She holds a Masters of Law in International Law and World Economy; (LLM), Bachelor of Laws with Honours (LLB), University of Malawi.

She has practiced law for 13 years and previously worked with Limbe Leaf Tobacco Company Limited as Legal Counsel, Deputy Chairperson of Industrial Relations Court (IRC), Assistant Registrar of the High Court and Supreme Court of Appeal and Senior Resident Magistrate. She is currently the Ombudsman of the Republic of Malawi.

As a Commissioner she is responsible for the Disability and Elderly Directorate. She is also a Commissioner of the Malawi Police Service Commission and a member of the Inspectorate of Prisons. She is a Board member of Vision Fund Malawi, Baobab Health Trust, Creative Centre for Community Mobilization (CRECOM) and PSI-Malawi.
THE MANAGEMENT TEAM

Mrs. Grace T. Malera
(Executive Secretary)

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

Mrs. Noris Mangulama Chirwa
(Director of Children’s Rights)

Mr. Harry Migochi
(Dir. Of Economic, Social and Cultural Rights)

Mr. Winston Mwafurirwa
(Director of Corporate Services)

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

Mr. Peter Cypriano Chisi
(Dir. Of Civil and Political Rights)
I am honoured to present to our stakeholders and the people of Malawi, through Parliament, the Annual Report for the past year. As I serve my first year as Chairperson of MHRC, the compilation of the 2015 Annual Report has provided for me and my fellow Commissioners an opportune moment to reflect on past activities and determining how best MHRC can effectively deliver its mandate.

We now have a collective sense of what has worked and what has not, and we are set to bring all the lessons learnt to leveraging the existing capacities into enhanced service delivery and responsiveness of the Commission.

The 6th Cohort of the Commission’s term of office commenced after the expiry of term of office for the 5th Cohort in July, 2015 and the appointment of the 6th Cohort in August, 2015. It is therefore befitting that in authoring the preamble to the 2015 Annual Report, I should start with acknowledging the contributions made by different players to the work of the Commission. I would like to recognise the contribution of the former Chairperson of the Commission, Ambassador Sophie Asimenye Kalinde, for her 3 years of diligent chairmanship. I also recognise all Commissioners, past and present, whose dedication to the Commission has seen it grow from strength to strength over the years, from 1998. The staff members of the Commission, who have continued to render valuable contribution in ensuring translation of policies set by the Commission into action, are also greatly appreciated.

The Commission has received and continues to receive the necessary support from the Executive arm of Government, Parliament, the Judiciary and several Government Ministries and 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. The support is highly appreciated as it has led to the continued positioning of the Human Rights Commission as one of the truly independent National Human Rights Institutions in Africa and internationally.

As we start our tenure of office, we realise the importance of reflecting and stocktaking on the achievements that have been recorded, as well as challenges that are outstanding. We note that there has been a decline in the number of cases that the Commission has been registering in the past three years, a trend that could be attributed to, among other factors: the multiplicity of actors that are engaged in human rights violations complaints handling; a rise in violations that go unreported; limited accessibility of the Commission; lack of knowledge on the part of victims; among other reasons. The Commission has taken necessary measures to address these issues.

In particular 2015 offered an opportune moment for restrategising, including through the development of the new National Action Plan on Human Rights, a process that took most of the Commission’s time in 2015. Furthermore, in 2015, the Commission initiated the process of reviewing its Strategic Plan and developing a follow up Strategic Plan for the years 2016 to 2020. Through these processes, the
Commission envisages that strategic guiding documents will be developed which should strengthen the Commission’s transformational role. Among other things, this will touch on enhancement of the Commission’s complaints handling capacity.

Another notable activity in the past year was the continuation of the accreditation of the Commission by the Sub Committee on Accreditation (the SCA) of the Global Alliance of National Human Rights Institutions (GANHRI). Since 2012, the SCA has been deferring consideration of the Commission’s accreditation to subsequent years, the latest deferral being from 2015 to May of 2016. In the interim the Commission has continued to enjoy an “A” status which it was accorded in 2007. At the close of the year the Commission in close collaboration with the Ministry of Justice and Constitutional Affairs was working on introducing the necessary amendments to the Human Rights Commission Act, in order to satisfy the accreditation requirements.

My fellow Commissioners and I will endeavour to consistently stay on course in constructive engagement with the GANHRI, ensuring implementation of its recommendations, in order for the Commission to retain its “A” status. Further the Commission will continue to follow up on strategies that were put in place for advocating for the necessary amendment of the Human Rights Commission Act.

Furthermore, a remarkable feature of 2015 was the increased and active participation of the Commission in state party reporting processes at both the United Nations and African Union levels, thereby complimenting the role of the Ministry of Justice and Constitutional Affairs in this regard. In particular in 2015, the Government of Malawi appeared before the UN Human Rights Council, for the Universal Periodic Review process. The Commission complemented Government’s efforts by submitting an alternative report, and was part of the delegation to the UPR sessions.

The Commission contributed to providing critical scrutiny of the recommendations that were provided to Malawi following the UPR session. Most of the UPR recommendations which the Government of Malawi accepted have been incorporated into the National Human Rights Action Plan that the Government has developed with the technical steering of the Commission. Further, in 2015, the Commission prepared an Alternative Report on the UN Convention on the Elimination of All Forms of Discrimination Against Women, and had also started preparatory work for compilation of alternative reports on the UN Convention on Torture and the UN Convention on the Rights of Persons with Disabilities. All these processes significantly contributed to strengthened human rights accountability mechanisms.

Several other activities of marked impact were also rolled out in 2015 including the process of resentencing of death row inmates which the Commission is spearheading in close collaboration with the Office of the Director of Public Prosecutions, the Legal Aid Bureau, 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.

The project is implementing a court order of 2007 and a subsequent order of 2010 where the courts ordered that all persons that were sentenced to the death penalty prior to 2007 had to be brought to court to have their sentences reheard. Several human rights education, advocacy, and monitoring and research activities were also carried out.

I should make mention of strategic investigations into the attacks or killings of persons with albinism,
police shooting incidences, and finalization of public inquiries into the status of sexual and reproductive health rights and access to justice by victims of gender-based violence respectively. Cumulatively, these activities led to access to justice and appropriate remedies by victims of human rights violations, and influencing and shaping appropriate policy reforms and public discourse on human rights. Thus, the past year saw significant progress in the role and functions of MHRC as provided for in the Constitution and the Human Rights Commission Act.

However, the various successes were achieved against a number of challenges such as: increased staff turnover, inadequate financial and material resources and the delay in commencement of work by the 6th Cohort of Commissioners. It is imperative that the Commission continues to put in place measures for offsetting these challenges if optimal service delivery is to be achieved in subsequent years.

All in all, notwithstanding the challenges that were faced, 2015 was a good year. Looking ahead to 2016, as the global community continues with the momentum the sobering reflections on the MDGs and the launching of the SDGs has provided, there is a renewed dedication in MHRC to ensure that Malawi’s human rights situation continues to register remarkable improvement.

The National Action Plan on Human Rights offers broad consensus amongst a diverse group of stakeholders from government, private, and CSOs as to the interventions that need to be put in place. The formulation of a successor Strategic Plan for MHRC covering 2016 to 2020 also offers a critical blue print for effectively carrying forward human rights promotion and protection work.

The Malawi Public Sector Reforms agenda that Government is vigilantly driving with view to enhancing efficiency and effectiveness in service delivery also offers an opportune time for increased fulfillment by Government of its human rights obligations. There could therefore be no better time than 2016 and beyond for significant milestones to be registered in Malawi’s human rights record.

I would therefore like to call on all my fellow Commissioners and staff of MHRC to seize these opportunities, and stay focused on, and remain committed to, robustly pursuing the human rights protection agenda. To all stakeholders, including Government, Parliament, the Judiciary, Private Sector, Traditional Leaders, and CSOs, I call for concerted efforts to scale up human rights promotion and protection interventions.

Most importantly for all people in Malawi, it is my expectation that we will all continue to exercise our rights to the fullest extent possible, cognizant at all times of the attendant responsibilities.

Once again, it is with honour that the 6th Cohort of MHRC commences its 3 years term of office, where I am privileged to serve as Chairperson, and on this note undertake to serve to the best of our ability in ensuring that human rights are realised by all people in Malawi.

Justin Dzonzi, Chairperson
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 2015, 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 5th Cohort of Commission which expired in July, 2015 and the subsequent appointment of the 6th Cohort in September 2015.

The main part of the Report is divided into the 6 principal areas of activities. 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 2014. In 2015, a total number of 262 cases were received and registered, registering a 26.8% decrease from 358 cases received and registered in 2014. This trend is attributed to, among other factors, the multiplicity of actors that are engaged in human rights violations complaints handling; a rise in violations that go unreported; limited accessibility of the Commission; lack of knowledge on the part of victims; among other reasons. The report further indicates that as was the case in 2014, Lilongwe district remains the highest with a total of 201 complaints representing 80.7%.

In 2015 the Commission did not receive complaints from districts such as Chitipa, Likoma, Mwanza, Neno, Thyolo and Nsanje as shown in the relevant table. This trend makes it imperative for the Commission to intensify its human rights civic education activities, including scaling up activities in these districts as well as intensifying collaboration with those players who have comparative advantage in terms of reach to the general public particularly at district and village levels. The Commission also needs to strengthen its network for registration of complaints of human rights violations.

Furthermore, the Report shows that in 2015, several activities were carried out in the area of civil and political rights, including, continuation of the 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. The project is implementing a court order of 2007 and a subsequent order of 2010 where the courts ordered that all persons that were sentenced to the death penalty prior to 2007 had to be brought to court to have their sentences re-heard.

Prior to 2007, the imposition of the death penalty was mandatory in any case where a person was convicted of murder. Through the 2007 judgment in the case of Francis Kafantayeni and others versus the Attorney General, the Constitutional Court found that the mandatory imposition of the death penalty was unconstitutional.

At the beginning of the project there was a total of 191 death row inmates that had to be brought to Court for resentencing hearings. The process started in earnest in February, 2015. At the close of the year 90 death row inmates had been taken to Court for resentencing hearings.

In March 2015, the Commission organized a colloquium for judges of the Supreme Court and High Court of Malawi on the Role of Mental Health Evaluations in Capital Sentencing. The colloquium was aimed at building capacity of participants to identifying and adjudicating upon relevant factors to the circumstances of the offence and the characteristics of the offender which show why the death penalty should be mitigated, particularly the mental health status of those entitled to be sentenced, both at the time of the offence and the time of sentencing.

This colloquium followed a successful training for lawyers, paralegals, mental health practitioners and 5 judges on Mental Health Evaluations and Capital Sentencing which was held in January 2015 in Zomba.

The Civil and Political Rights Directorate also contributed to various state party reporting programmes, including compiling and submitting a report on the United Nations Universal Periodic Review (UPR) of Malawi. The UPR report was submitted to the United Nations in November 2014.

In May 2015, MHRC was part of Malawi’s delegation to the United Nations on the UPR. The recommendations from the UPR were incorporated into the National Action Plan for Human Rights that the Government of Malawi is developing with the technical assistance of the Commission.

2015 also saw the Commission effectively carrying out various human rights education, advocacy, and monitoring and research activities. These activities were aimed at ensuring that the Commission’s visibility is enhanced at the same time influencing and shaping policy reforms and public discourse on human rights.

Some of the activities include an expert conference on death penalty; Child Trafficking Campaigns in Schools; Advocacy on Child Friendly Legislation, Advocacy on the Enactment of Adoption of Children Bill (Amendment); Advocacy on the Enactment and Gazette of the Trafficking in Persons Act, 2015; monitoring the implementation of Disability Act (2012), monitoring compliance with international standards on management of elderly homes; training and development of monitoring tools for UNCRPD and thematic discussion on Human Rights Based Approaches with District Directors Planning (DDP) and District Social Welfare Officers (DSWOs) on Disability Rights.

In 2015, the Commission finalized the nation-wide Public Inquiries on Access to Justice by Victims of Gender-based Violence; the Status of Sexual and Reproductive Health and Rights in Malawi. Public Inquiries
are carried out as a means of addressing systemic human rights violations, in order to among other things, unearth and address the structural causes for such violations. The Inquiry on Access to Justice by Victims of Gender-based Violence was aimed at establishing the responsiveness by duty bearers 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.

The inquiry further explored the linkages between the formal and informal justice systems at community level. The Inquiry’s main findings were weak enforcement of judicial orders and other forms of interventions from the justice system, high cost of accessing justice - both informal and formal, weak coordination and corroboration amongst justice actors and limited awareness of human rights among others, on which basis several recommendations were made.

The public inquiry on the Status on the Status of Sexual and Reproductive Health and Rights was aimed at establishing the extent and nature of violations of sexual and reproductive health rights along the continuum of availability, accessibility, acceptability and quality as well as recommending appropriate redress measures.

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. Within this section, the report covers two strategic activities which took most of the Commission’s time in 2015, i.e., the development of a new National Human Rights Action Plan (NAP), replacing the one that expired in 2011, and the review of the 2011-2015 MHRC Strategic Plan, and development of a follow up Strategic Plan.

During the year, the Commissioners and Staff conducted some preliminary review of the old Strategic Plan and identified some of the issues to be included in the new Strategic Plan. The new Strategic Plan is expected to be finalized in the first half of 2016.

The Report concludes by highlighting the major challenges that the Commission faced, including: inadequate funding from Government; shortage of staff; inadequate equipment and inadequate and insecure offices. The Report ends with a major recommendation to the Government, development partners and other players to continue directing concerted efforts towards addressing these challenges, in order to ensure that the Commission is capacitated to a level where it can fully and effectively discharge its constitutional and statutory mandate.
Picture of Participants preparing for the Commemoration of the 2015 International Human Rights Day

2015 International Human Rights Day Solidarity March
Chapter One:

BACKGROUND INFORMATION

1.0 INTRODUCTION
This Report is the 16th 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 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:

Vision

“A Malawi Society where Human Rights are respected and enjoyed by all – where freedom, justice, peace and prosperity exist.”

Mission

“To lead the protection and promotion of human rights, to provide access to effective remedies for human rights grievances and to develop a culture of respect and responsibility for human rights by Government, its agencies, private sector institutions and all peoples in Malawi.”
Values
Non Partisanship; Loyalty to the Constitution; Independence in operations; Fairness and Impartiality; Transparency and Accountability; and Integrity.

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

(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 empowered by section 130 of the Constitution to investigate complaints of human rights violations upon receiving submissions 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 Act sets out the modes of operation that guide the Commission’s complaints handling process. In 2015, the Commission received and handled; and in some instances on its volition took up matters of human rights violations covering a broad range of thematic human rights areas. The complaints were received by the Commission from individuals, groups of individuals or their representatives; third parties; Non-Governmental Organizations; and professional associations.

The Commission handles the complaints it receives through numerous mechanisms including: investigations; provision of legal advice and/or referral information to appropriate institutions; alternative dispute resolution, for instance hearings, and litigation. In order to facilitate an effective referral mechanism, the Commission consolidated its working relationships with a number of institutions such as: the Office of the Ombudsman, the Anti-Corruption Bureau (ACB), the Judiciary, the Malawi Police Service, Ministry of Gender, Children and Community Development (in particular District Social Welfare Offices) and a number of CSOs and CBOs.
2.1 CASE STATISTICS

2.1.1 Categories of Complaints Received and Registered

In 2015, total number of 262 cases were received and registered, registering a 26.8% decrease from 358 cases received and registered in 2014. This trend is attributed to, among other factors, the multiplicity of actors that are engaged in human rights violations complaints handling; a rise in violations that go unreported; limited accessibility of the Commission; lack of knowledge on the part of victims; among other reasons. This downward trend makes it imperative for the Commission to intensify its human rights civic education activities, including scaling up activities in these districts as well as intensifying collaboration with those players who have comparative advantage in terms of reach to the general public particularly at district and village levels. The Commission also needs to strengthen its network for registration of complaints of human rights violations.

The 262 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 108 cases representing the majority of cases at 41%. This could be a 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 in the civil and political rights category. Nonetheless, although there seems to be that shift, civil and political rights also continue to register a greater number of reported cases, with a total of 85 registered in 2015, representing 32%.

<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>29</td>
<td>11</td>
</tr>
<tr>
<td>Civil and political rights</td>
<td>85</td>
<td>32</td>
</tr>
<tr>
<td>Gender and women rights</td>
<td>15</td>
<td>5</td>
</tr>
<tr>
<td>Economic social and cultural rights</td>
<td>108</td>
<td>41</td>
</tr>
<tr>
<td>Disability and elderly rights</td>
<td>29</td>
<td>11</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>262</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>
2.1.2 Nature of complaints registered

The table below shows the case statistics in accordance with the specific nature of the human rights 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</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to Fair Labour Practices</td>
<td>Economic social and cultural</td>
<td>58</td>
<td>22.1</td>
</tr>
<tr>
<td>Right to Access to Justice</td>
<td>Civil and political</td>
<td>44</td>
<td>16.8</td>
</tr>
<tr>
<td>Right to Human Dignity</td>
<td>Civil and political</td>
<td>16</td>
<td>6.1</td>
</tr>
<tr>
<td>Child Rights</td>
<td>Child Rights</td>
<td>29</td>
<td>11.1</td>
</tr>
<tr>
<td>Right to Life</td>
<td>Civil and political</td>
<td>3</td>
<td>1.1</td>
</tr>
<tr>
<td>Right to fair administrative justice</td>
<td>Economic social and cultural</td>
<td>10</td>
<td>3.8</td>
</tr>
<tr>
<td>Right to property</td>
<td>Economic social and cultural</td>
<td>6</td>
<td>2.3</td>
</tr>
<tr>
<td>Right to economic activity</td>
<td>Economic social and cultural</td>
<td>14</td>
<td>5.3</td>
</tr>
<tr>
<td>Right to Land</td>
<td>Economic social and cultural</td>
<td>16</td>
<td>6.1</td>
</tr>
<tr>
<td>Right to non-discrimination</td>
<td>Civil and political</td>
<td>2</td>
<td>0.7</td>
</tr>
<tr>
<td>Right to family life and marriage</td>
<td>Economic social and cultural</td>
<td>17</td>
<td>6.5</td>
</tr>
<tr>
<td>Right to personal liberty</td>
<td>Civil and political</td>
<td>9</td>
<td>3.4</td>
</tr>
<tr>
<td>Right to health</td>
<td>Economic social and cultural</td>
<td>2</td>
<td>0.8</td>
</tr>
<tr>
<td>Freedom of association</td>
<td>Civil and political</td>
<td>2</td>
<td>0.8</td>
</tr>
<tr>
<td>Right to education</td>
<td>Economic social and cultural</td>
<td>4</td>
<td>1.5</td>
</tr>
<tr>
<td>Deceased property</td>
<td>Economic social and cultural</td>
<td>9</td>
<td>3.4</td>
</tr>
<tr>
<td>Right to freedom of Religion and Conscience</td>
<td>Economic social and cultural</td>
<td>2</td>
<td>0.8</td>
</tr>
<tr>
<td>Women’s rights</td>
<td>Gender and women</td>
<td>3</td>
<td>1.1</td>
</tr>
<tr>
<td>Disability and Elderly rights</td>
<td>Disability and elderly rights</td>
<td>18</td>
<td>6.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>262</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

2.2 Cases registered according to Gender

Table 1 below shows total number of complaints registered according to gender. The table indicates that most of the cases (151) representing 57% were lodged by males and 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 thus uncles, husbands, sons even on the point of entry into the formal justice system. It is important to note that this trend has been observed since the inception of the Commission.

Table 2 below shows that as complaints intake into the Commission decreases, proportions of complaints registered by both males and females also decrease in a similar fashion but maintaining the differences between them where males dominate. It should also be noted that even where complaints are registered by groups, it is mostly males who lead the groups.
### TABLE 1: TABLE SHOWING COMPLAINTS RECEIVED 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>151</td>
<td>102</td>
<td>9</td>
<td>262</td>
</tr>
<tr>
<td>Percent</td>
<td>57.6%</td>
<td>38.9%</td>
<td>3.4%</td>
<td>100%</td>
</tr>
</tbody>
</table>

FIGURE 1:
FIGURE SHOWING TREND OF CASE REGISTRY BY GENDER, 2006 – 2015

2.3 Cases registered according to districts

The Commission has receives cases from different districts in the country, as well as from other countries. Table 1 below summarizes the statistics of complaints registered in accordance with districts. As indicated in the previous year, Lilongwe district remains the highest with a total of 201 complaints representing 80.7%. In 2015 the Commission did not receive complaints from district such as Chitipa, Likoma, Mwanza, Neno, Thyolo and Nsanje as show in the table below.
### TABLE 2: TABLE SHOWING CASES REGISTERED BY DISTRICT OF ORIGIN

<table>
<thead>
<tr>
<th>District</th>
<th>Cases registered</th>
<th>Percent of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lilongwe</td>
<td>214</td>
<td>81.7</td>
</tr>
<tr>
<td>Nkhotakota</td>
<td>1</td>
<td>0.4</td>
</tr>
<tr>
<td>Dowa</td>
<td>6</td>
<td>2.3</td>
</tr>
<tr>
<td>Machinga</td>
<td>2</td>
<td>0.8</td>
</tr>
<tr>
<td>Blantyre</td>
<td>5</td>
<td>1.9</td>
</tr>
<tr>
<td>Mchinji</td>
<td>6</td>
<td>2.3</td>
</tr>
<tr>
<td>Mangochi</td>
<td>1</td>
<td>0.4</td>
</tr>
<tr>
<td>Salima</td>
<td>3</td>
<td>1.1</td>
</tr>
<tr>
<td>Zomba</td>
<td>3</td>
<td>1.1</td>
</tr>
<tr>
<td>Balaka</td>
<td>2</td>
<td>0.8</td>
</tr>
<tr>
<td>Ntcheu</td>
<td>3</td>
<td>1.1</td>
</tr>
<tr>
<td>Mzimba</td>
<td>1</td>
<td>0.4</td>
</tr>
<tr>
<td>Karonga</td>
<td>2</td>
<td>0.8</td>
</tr>
<tr>
<td>Kasungu</td>
<td>3</td>
<td>1.1</td>
</tr>
<tr>
<td>Dedza</td>
<td>3</td>
<td>1.1</td>
</tr>
<tr>
<td>Chiradzulu</td>
<td>1</td>
<td>0.4</td>
</tr>
<tr>
<td>Mulanje</td>
<td>1</td>
<td>0.4</td>
</tr>
<tr>
<td>Ntchisi</td>
<td>3</td>
<td>1.1</td>
</tr>
<tr>
<td>Chikwawa</td>
<td>1</td>
<td>0.4</td>
</tr>
<tr>
<td>Thyolo</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Nkhatabay</td>
<td>1</td>
<td>0.4</td>
</tr>
<tr>
<td>Nsanje</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Mwanza</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Neno</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Chitipa</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Likoma</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>262</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

### 2.4 Summary of cases handling statistics

Table 2 below shows a summary of the complaints which were handled in 2015 in accordance with human rights, form of violation and status of the complaints. From the table, the Commission resolved 49 cases. The Commission is still carrying out investigations on 147 complaints, 17 are still to receive legal action through the courts and 8 complainants are going through an Alternative Dispute Resolution.
### TABLE 3: TABLE SHOWING CATEGORY OF CASE BY MODE OF HANDLING OF CASE

<table>
<thead>
<tr>
<th>CATEGORY OF RIGHT</th>
<th>Cases Received</th>
<th>Cases Under Investigation</th>
<th>Cases under ADR</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</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to Fair Labour Practices</td>
<td>58</td>
<td>10</td>
<td>2</td>
<td>0</td>
<td>25</td>
<td>22</td>
<td>0</td>
</tr>
<tr>
<td>Right to Access to Justice</td>
<td>44</td>
<td>27</td>
<td>0</td>
<td>10</td>
<td>4</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Right to Human Dignity</td>
<td>16</td>
<td>9</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>Child Rights</td>
<td>29</td>
<td>25</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Right to Life</td>
<td>3</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Right to fair administrative justice</td>
<td>10</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Right to property</td>
<td>6</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Right to economic activity</td>
<td>11</td>
<td>8</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Right to Land</td>
<td>16</td>
<td>13</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Right to family life and marriage</td>
<td>17</td>
<td>8</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Right to personal liberty</td>
<td>9</td>
<td>9</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Rights of refugees and asylum seekers</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Deceased property</td>
<td>9</td>
<td>8</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Right to freedom of Religion and Conscience</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Women’s rights</td>
<td>3</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Disability &amp; Elderly Rights</td>
<td>5</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Right to non-discrimination</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Right to education</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Freedom of association</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Right to health</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>249</strong></td>
<td><strong>134</strong></td>
<td><strong>8</strong></td>
<td><strong>17</strong></td>
<td><strong>45</strong></td>
<td><strong>37</strong></td>
<td><strong>4</strong></td>
</tr>
</tbody>
</table>
Chapter Three:

CIVIL AND POLITICAL RIGHTS

3.0 INTRODUCTION
As a member of the international human rights Community, Malawi is a member of the United Nations (UN) and is also a signatory of a number of international human rights instruments under the United Nations as well as those under the African and SADC region. 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 2015, the Commission carried out several activities on the thematic area of civil and political rights. These included investigations into human rights violations, human rights monitoring and Alternative Dispute Resolution (ADR) for human rights related issues. Below are some of the highlights of the work carried out in the course of the year.

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 2015, the Directorate had several 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 which were handled.

3.1.1 Charles vs. Mota Engil Civil Appeal No.28 of 2012 (HRC/05/01/952)
Charles is an old man of over 60 years of age. He used to work for Mota Engil as a driver. He was dismissed unlawfully in 2011. He sued Mota Engil for unlawful dismissal. His case was dismissed by the Industrial Relations Court. He appealed to the High Court against the IRC judgment. On his own, he argued the appeal case and won. In the judgment dated 19th August, 2013 the High Court ordered that he should be paid: (1) his salary for January, 2011, (2) K974, 043.20 as unpaid overtime for the duration of his service, (3) K55, 887.72 as compensation for unfair dismissal and (4) costs of the court proceedings. For close to 2 years Mota Engil failed to pay him any money despite getting frequent reminders from him. He lodged a complaint with MHRC asking MHRC to help him enforce the court order. MHRC applied for and obtained a warrant of execution and executed against Mota Engil. On the same day of execution Mota Engil paid him K1,094,930.92 (one million, ninety four thousand, nine hundred thirty Kwacha and ninety two tambala).

3.1.2 X (Suing through Y, Parent) vs. Lester Chikoya and Prime Insurance Company Limited (HRC/05/09/838)
On or about 20th September, 2014 the 1st defendant was driving a motor vehicle from the direction of Chinsapo I graveyard heading towards Bell Private Secondary School campus and, as he was arriving at Bell Private Secondary School campus, he so negligently drove the motor vehicle that he hit X, a child. At the material time X was watching Gule Wamkulu traditional dance outside the road. X suffered several injuries including deep scalp wounds, soft tissue injury to the back with many lacerations and abrasions, bruises on the left leg and cut on the left foot, and hair loss. The injury was assessed as 37% incapacity.
Y, father to X, approached MHRC to help claim compensation from the defendants. MHRC lodged a claim with the Defendant on 12th August, 2015. The Defendant offered to pay K650,000 (six hundred and fifty thousand Kwacha) to which the complainants agreed. This money has since been paid and the matter is closed.

3.1.3  X vs. Y and Z Civil Cause No.1015 of 2015 (High Court, Lilongwe District Registry) (HRC/05/51/238)
On 25th June, 2015 MHRC received a complaint that Y, an employee of a security Company, ‘Z’, spread chitedze (Mucuna pruriens) on X, an 11-year-old child, at Chipiku in Area 4 on 25th June 2015. The child was reported to have suffered extreme itching and pain and to have rolled on the ground in agony.

MHRC investigated the matter promptly. Y’s side of the story was heard. Witnesses were also interviewed. Y admitted to have intentionally spread chitedze on the child with a view to keeping him off from Chipiku premises. Eye witnesses and the child’s parents were also interviewed. Based on MHRC’s findings, it was clear that the child had been subjected to cruel, inhuman or degrading treatment or punishment, and there was a violation of the child’s right to human dignity contrary to section 19 of the Constitution. Following instructions from the parents, a demand letter was written to Z on 28th August, 2015. By letter dated 4th September, 2015, the 2nd Defendant denied liability. Court proceedings were commenced by mid-September, 2015, and at the time of writing the report the case had not been concluded.

3.1.4  X vs. Y Civil Cause No.126 of 2015 (HRC/05/01/1061)
X lodged a complaint with MHRC about the manner in which her lawyer had prosecuted her matrimonial case and the manner in which the Magistrate Court had handled the case. Her complaint was basically that, although she accepted the outcome of the case namely divorce, she had not been given an opportunity to inform the court the problems she had gone through in the marriage.

Some of the problems she had gone through included: (i) the husband expressing dissatisfaction with the sex of the children (all her 4 children being girls) and insisting that she should continue bearing children in the hope of giving birth to a male child, despite medical advice that she should not continue.

As a result of birth complications, she has a medical condition; (ii) the husband indulging in an extramarital relationship out of which a child was born, and (iii) the husband financially or economically abusing her by forbidding her to do any business or to get employed. MHRC was informed that since the dissolution of the marriage the Respondent has neglected to provide for her and the children.

After discussion with the complainant it was agreed that she needed (i) custody of all the children (the eldest child being 11 years old), (ii) their maintenance, and (iii) her maintenance. Subsequently, MHRC discussed the issue with the lawyer who had represented her. It was agreed that MHRC could proceed to represent her.

MHRC made the applications and she was granted custody of the children. Further, the Court ordered that her husband should be providing K60,000 as monthly maintenance for the children.

The application for the complainant’s maintenance is still pending.

3.1.5  Blessings Banda vs. Attorney General (Malawi Prisons Service) (HRC/05/01/1003)
Mr. Blessings Banda lodged a complaint with MHRC to the effect that he had been injured in a road accident whilst in custody at Maula Prison. The injuries resulted in him being disabled to the extent
of using a wheelchair. Upon receipt of the complaint the Commission conducted preliminary investigations which proved that Malawi Prisons was aware of the matter. The Commission then wrote the Attorney General claiming compensation on behalf of the complainant. The Attorney General raised some objections, pushing the blame to the complainant. The Commission commenced proceedings in the high court wherein Mr. Banda is claiming compensation, and at the time of writing the report the case had not been concluded.

3.1.6 X -v- Y Civil Cause No. 1432 of 2015
X lodged a complaint with the Commission to the effect that her mother, Y, who was a commercial sex worker, did not want her to go to church and that when she went to church Y beat her up. The complainant was seeking a protection order. MHRC applied for a protection order and the order was granted by the Magistrate Court restraining the Respondent from committing such acts of domestic violence.

3.1.7 X -v- Y Civil Cause No. 1433 of 2015
The Commission received a complaint from X that her husband, Y, was subjecting her to domestic violence. Among other things, she complained that he used to beat up her and two children of their marriage. She also complained that he had several extra-marital relationships; that he failed to pay her salaries for work done at their jointly owned school contrary to agreement. The complainant said she left her matrimonial home together with the children and went to stay with her parents.

She further complained that, during their separation, the Respondent at some point in time took the children away from her parents home without her permission and knowledge; she further complained that (i) he was stalking her and sending her intimidating and harassing messages (e.g. threatening to deal with her wherever he would meet her), (ii) he was operating a Facebook account under her name (‘ABC’), using her photos without her consent and writing improper messages from that account with the aim or effect of tarnishing her image, and (iii) he was not providing maintenance for the children.

The Commission prepared and filed an application for a protection order. The order was granted restraining the Respondent from (i) assaulting, insulting, intimidating and stalking the Applicant, (ii) from using the Applicant’s name in any way or putting her name into disrepute, (iii) ordering the Respondent to stop operating the Facebook account and to delete the messages in question, etc. The Order was then served on the Respondent.

3.1.8 Kondwani Banda, Gogo Estele Betha and Getrude Phiri -v- Geoffrey Kusalala and Mapilani Civil Cause No.911 of 2015
The Complainant registered a complaint that the Magistrate Court had entered judgment in his absence and without hearing his side of the story and had ordered that all his buildings (5 houses) be demolished forthwith for trespass/encroachment. The judgment had been entered against him because he failed to turn up. All that he wanted was MHRC to stay execution of the judgment and to apply to the court to allow him to present his evidence in defence.

The Commission accordingly prepared an application for stay of execution of the judgment. Stay was granted. MHRC also prepared an application to set aside the judgment, and the same was granted. The case was adjourned to 25 January 2016 for him to present his evidence in defence. At the time of writing the report the case had not been concluded.
3.1.9  X -v- Y Civil Cause No. 1270 Of 2015
The Complainant lodged a complaint with the Commission to the effect that in May 2013 she had been injured by a belt of maize mill belonging to the Respondent, which was operated without being fenced. The Commission investigated the matter. Discussions to get the Respondent to pay the Complainant proved futile. A decision was made that the Respondent should be sued. Accordingly, the Commission filed a summons suing the Respondent for negligence. The Complainant got a default judgment in December 2015. The Complainant is yet to be paid compensation.

3.1.10  Blackson Kasuzumila Mphandauyo & 12 Others -V- Attorney General Civil Cause No.1387 Of 2015
The Plaintiffs are residents of Mphandauyo II Village in Lilongwe. They wanted to sue the Defendant for false imprisonment. The background to the matter is that on or about 20th June, 2013 the Plaintiffs were arrested by Police officers based at Lilongwe Police Station for the offence of arson. At the time of arrest, none of the Plaintiffs was informed of the reasons of his arrest but was informed of the same while at the Police Station.

All the Plaintiffs, except the 9th and 12th Plaintiffs, were incarcerated at Maula Prison from 20th June to 4th July 2013. The 9th and 12th Plaintiffs, being children at the time of arrest, were incarcerated at Kachere from 20th June to 4th July 2013. The Plaintiffs were subjected to conditions inconsistent with human dignity. The Defendant instituted criminal proceedings against the Plaintiffs in Criminal Case No.638 of 2013 before the Magistrate Court in Lilongwe but offered no evidence as a result of which, on 4th July 2013, the Court acquitted all the Plaintiffs of the charge of arson.

The Defendant did not have reasonable and probable cause for instituting the criminal proceedings and acted with malice and with an intention merely to victimize the Plaintiffs. From the time of arrest to the time of release, the Defendant paraded the Plaintiffs in handcuffs in full view of the public, which act was naturally and ordinarily understood by the public to mean that the Plaintiffs were criminals. The Plaintiffs were therefore prompted to lodge a complaint with the Commission and to instruct it to commence the proceedings.

The Commission tried to liaise with the Attorney General but to no avail. As a last resort, the Commission commenced these proceedings. The Plaintiffs sued for false imprisonment and defamation. A default judgment on the case has been obtained against the Defendant.

3.2  Facilitation of Re-sentencing Hearing Proceedings for Death row Inmates
The Commission continued to coordinate the project that aims at enforcing the Constitutional Court judgment Following the judgment 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 judgment 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 rehearing 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 (PASI), Center for Human Rights Advocacy and Education (CHREA), and Cornell University School of Law, aimed at bringing the concerned prisoners to court to undergo a sentence re-hearing. The Commission plays the key role of coordinating implementation of several activities under the project, to ensure that the project goal and objectives are achieved.

Sentence rehearings commenced in February 2015. So far, at least 74 prisoners out of 174 prisoners have been reheard on sentence and their cases have been concluded. At least 10 DPP lawyers and 20 defence lawyers (comprising MHRC, Legal Aid Bureau and pro bono lawyers) and 13 judges have handled the cases. Some prisoners have been immediately released following the reduction in their sentences. Below is a summary of cases concluded and the outcomes.
### SUMMARY OF CASES THAT HAVE UNDERGONE SENTENCE REHEARING BY DECEMBER 2015

<table>
<thead>
<tr>
<th>Category</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL CASES GONE THROUGH PROJECT</td>
<td>64</td>
</tr>
<tr>
<td>Hearing and judgment completed</td>
<td>63</td>
</tr>
<tr>
<td>• Life sentence changed to order of immediate release</td>
<td>21</td>
</tr>
<tr>
<td>• Life sentence changed to determinate IHL resulting in immediate release</td>
<td>29</td>
</tr>
<tr>
<td>• Death sentence changed to IHL, resulting in immediate release</td>
<td>1</td>
</tr>
<tr>
<td><strong>Sub-total: resulting in immediate release</strong></td>
<td><strong>51</strong></td>
</tr>
<tr>
<td>• Life sentence changed to determinate IHL, with further time to be served</td>
<td>10</td>
</tr>
<tr>
<td>• Death sentence changed to IHL, with further time to be served</td>
<td>2</td>
</tr>
<tr>
<td><strong>Sub-total: resulting in immediate release</strong></td>
<td><strong>12</strong></td>
</tr>
<tr>
<td>Deceased before judgment</td>
<td>1</td>
</tr>
<tr>
<td>Hearing started but not yet completed</td>
<td>7</td>
</tr>
<tr>
<td>• Judgment reserved</td>
<td>5</td>
</tr>
<tr>
<td>• Bail pending appeal</td>
<td>1</td>
</tr>
<tr>
<td>• Sent to MSCA for determination</td>
<td>1</td>
</tr>
</tbody>
</table>
3.3 HUMAN RIGHTS MONITORING AND RESEARCH

3.3.1 Monitoring of prisons in Malawi

The Commission monitored some prisons in Malawi. This was in line with its constitutional mandate as stipulated in Section 129 of the Constitution of the Republic of Malawi is a National Human Rights Institution in Malawi established under Section 129 of the Republic of Malawi Constitution (the Constitution).

The mandate of the Commission under the Constitution is very broad, and it includes the protection and promotion of human right as well as the investigation of human rights violations. As one way of fulfilling this mandate, the Commission is empowered to exercise unhindered authority to visit prisons or any places of detention of persons with or without notice.

Over the years, the Commission has been conducting monitoring visits to prisons and other places of detention and recommendations were made to stakeholders. The last time the Commission carried out these visits was in 2013. Since then much has taken place and there have been new developments concerning prisons and rights of prisoners. It was also high time that the Commission took stock of how the recommendations of the previous prison monitoring exercise have been acted upon. It is against this background that the Commission undertook human rights situation monitoring visits to various prisons in Malawi in July 2015.
The visits were also aimed at following up on the recommendations that were put forward in the previous monitoring exercise.

The monitoring did not target all the prisons in the country but managed to cover more than half of all the prisons in the country. The following are prisons that were visited:

### LIST OF PRISONS VISITED DURING THE PRISON MONITORING EXERCISE

<table>
<thead>
<tr>
<th>Northern Region</th>
<th>Central Region</th>
<th>Eastern Region</th>
<th>Southern Region</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mzimba</td>
<td>Nkhotakota</td>
<td>Mangochi</td>
<td>Chichiri</td>
</tr>
<tr>
<td>Mzuzu</td>
<td>Maula</td>
<td>Zomba</td>
<td>Chikhwawa</td>
</tr>
<tr>
<td>Nkhata Bay</td>
<td>Kachere</td>
<td>Domasi</td>
<td>Mwanza</td>
</tr>
<tr>
<td>Rumphi</td>
<td>Dedza</td>
<td>Mikuyu</td>
<td>Thyolo</td>
</tr>
<tr>
<td></td>
<td>Ntcheu</td>
<td></td>
<td>Bvumbwe</td>
</tr>
</tbody>
</table>

In terms of prison facilities and capacity, it was found that there were just a few exceptional cases where the prison population was operating within their original capacity. One such example was Rumphi Prison, where the prison population was almost equal to its original capacity. Below is a summary of the findings on capacity.
## AN ANALYSIS OF PRISON CAPACITY AND THE ACTUAL NUMBER OF INMATES THAT THEY ACCOMMODATE

<table>
<thead>
<tr>
<th>Name of Prison</th>
<th>Capacity</th>
<th>Number of inmates</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Rumphi</td>
<td>250</td>
<td>248</td>
<td>-2</td>
</tr>
<tr>
<td>2. NkhataBay</td>
<td>60</td>
<td>131</td>
<td>+71</td>
</tr>
<tr>
<td>3. Mzuzu</td>
<td>200</td>
<td>492</td>
<td>+292</td>
</tr>
<tr>
<td>4. Mzimba</td>
<td>300</td>
<td>596</td>
<td>+296</td>
</tr>
<tr>
<td>5. Nkhotakota</td>
<td>250</td>
<td>420</td>
<td>+170</td>
</tr>
<tr>
<td>6. Maula</td>
<td>800</td>
<td>2,570</td>
<td>+1770</td>
</tr>
<tr>
<td>7. Mangochi</td>
<td>85</td>
<td>249</td>
<td>+164</td>
</tr>
<tr>
<td>8. Zomba</td>
<td>800</td>
<td>2,222</td>
<td>+1422</td>
</tr>
<tr>
<td>9. Chichiri</td>
<td>393</td>
<td>1,576</td>
<td>+1183</td>
</tr>
<tr>
<td>10. Chikhwawa</td>
<td>515</td>
<td>391</td>
<td>-124</td>
</tr>
<tr>
<td>11. Nsanje</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>12. Mwanza</td>
<td>200</td>
<td>280</td>
<td>+80</td>
</tr>
<tr>
<td>13. Thyolo</td>
<td>80</td>
<td>166</td>
<td>+86</td>
</tr>
<tr>
<td>14. Bumbwe</td>
<td>84</td>
<td>248</td>
<td>+164</td>
</tr>
</tbody>
</table>

This table excludes those Prisons where there was no reliable information with regard to the Prison’s holding capacity.

*Chichiri Prison ventilation situation, Prison overcrowding situation: Picture by Joao Silva for The New York Times*
In terms of ventilation, it has been observed that most prisons do not have adequate ventilation and floor space. The situation is worse in the male sections of the prisons. The prison population of females is fairly low and the women are kept in cells that are generally not overcrowded. The fact that female cells are not overcrowded also means that generally their facilities such as toilets, bathrooms etc, are generally better than those of their male counterparts.

The majority of the prison cells have limited windows to allow proper ventilation. This does not apply across the board as some improvements have been noted here and there. There are some cells that have been built in recent years in some prisons which have adequate ventilation. Comparatively, most of the cells in the prisons that do not have adequate ventilation were noted to be in the male sections in the prisons that were visited. But even in instances where the cells can be said to be well ventilated, the whole purpose of good ventilation is defeated by overcrowding which limits the flow of fresh air in the prisons.

In the northern region, Mzuzu Prison was observed to be the poorest in terms of ventilation in the cells seconded by Nkhatataby. Mzimba Prison is the only Prison with good ventilation. However, the design of the prison is faulty as the cell areas are very small and the windows are only saving the purpose of air circulation within the enclosed prison facility. There are no back wall windows to allow for air circulation from inside and outside the prison. It is for this reason that one stakeholder described the situation at Mzimba Prison as a Death Trap.

In the monitoring report, the following conclusions and recommendations were made:

1. The state should expedite prosecution of murder cases whose suspects have overstayed in Malawi prisons.
2. The state should strengthen community service as alternative to custodial sentencing to mitigate congestion in prison cells.
3. The state should renovate prison facilities such as toilets, broken showers, dirty walls and water drainage system in Malawi’s prisons.
4. The state should build more cells to mitigate congestion in prisons.
5. Prisons should have separate cells for inmates with contagious ailments.
6. The state should make all Prison facilities disability friendly in line with Disability Act of 2012.
7. The state should put up special facilities for remandees who are at the meantime a burden to the Malawi Prisons Services and further their life in prison portrays them as convicts.
8. The state should provide adequate funds to adhere to the ruling of Gable Masangano’s case and ensure adequate toiletries.
9. The state should put up child friendly premises within prison to cater for children accompanying their mothers in custody.

As a long term plan, it was further recommended as follows:

1. Government must construct at least one prison in each district which is disability friendly in a bid to lessen the problem of congestion in prisons as well as ensure that offenders from a district are not disconnected from their communities and relatives due to the unavailability of prisons in their respective districts;
2. Comprehensive reformatory programmes must be institutionalized in all prisons with a focus of rehabilitating inmates in a bid to enable inmates become productive citizens (even within prisons) as well as preparing inmates for possible reintegration into society for those awaiting release;
3. Offenders who commit minor offences or misdemeanours on a first offender basis must be considered for community services as opposed to custodial sentences;

4. Special consideration must be given to children living in prison with their mothers by prison authorities. Specifically, government must assume primary responsibility for these children by ensuring that nutritious meals necessary for their development are provided to such children at least three times a day; children under the age of five access under five clinics on a consistent basis; separate appropriate accommodation is provided for female inmates who have children; and that children have access to ECD programmes whether within or outside prison facilities.

5. Government must provide funding to facilitate the renovations of toilets and bathrooms currently non-functional in many prison cells which are necessary for the sustenance of proper hygiene within the cells;

6. Prisons must ensure that they institutionalize gender sensitive programming in the provision of all services for inmates. This includes the provision of sanitary pads and proper sanitary disposal facilities in all female cells.

7. Prisons facilities must be disability friendly, thus government must commence initiatives towards making prisons buildings more accessible to persons with disabilities. In addition, learning materials provided to inmates and their mode of delivery should take into consideration the specific needs of persons with disabilities such as the visually impaired and those with hearing difficulties.

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 preparing state party reports. The Commission participated in preparatory meetings of the National Task Force on State Party Report on CAT.

The Commission attended the United Nations (UN) Human Rights Council meeting from 5th May to 8th May, 2015 during the 2nd Cycle of the Universal Periodic Review (UPR). The UPR is a unique process which involves a periodic review of the human rights records of all 193 UN Member States relating to the fulfillment by each State of its human rights obligations and commitments. The process provides an opportunity for all States to state what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights and sharing of best practices among states. Malawi’s review followed a first review that took place in 2010.

The Malawi delegation to the 2nd cycle UPR was led by the Minister of Justice and Constitutional Affairs, Honourable Samuel Tembenu, and comprised the Solicitor General and Secretary for Justice and Constitutional Affairs, Dr. Janet Banda, and officials from the Ministry of Justice and Constitutional Affairs; representatives of the Malawi Human Rights Commission; the Judiciary; the Ministry of Gender, Children, Social Welfare and Disability; and Non-Governmental Organisations. The Malawi Human Rights Commission representatives were: Ambassador Sophie Asimenye Kalinde, Chairperson of the Commission, Reverend Dr. Zacc Kawalala, Commissioner, and Mrs. Grace Tikambenji Malera, Executive Secretary.
The Malawi Human Rights Commission played various instrumental roles in the UPR process, including, membership of the Task Force that was constituted by the Ministry of Justice and Constitutional Affairs to compile Malawi’s State Party Report for the 2nd Cycle UPR. The Commission provided the bulk of the information for the Report.

During the review of Malawi, the Commission played an instrumental role in consistently engaging with the Ministry of Justice and Constitutional Affairs in devising responses to the advance questions that Malawi received from member states regarding Malawi’s human rights situation. Furthermore, the Commission actively participated in the consideration of all the 207 recommendations that members states provided to Malawi contributing to Government’s position on the recommendations.

Malawi was reviewed during the 22nd Session of the Human Rights Council. Malawi’s review was undertaken by the following group of rapporteurs (troika) that facilitated the review: Albania, Kazakhstan and Kenya. The Troika was selected by the UN Human Rights Council in line with the procedures for UPR.

Over 60 member states asked questions on Malawi’s UPR State Party Report and provided recommendations. Through the review the UN noted that Malawi has made considerable progress in implementing the recommendations relating to human rights that were received in the 1st cycle review. The majority of countries that provided feedback on the Malawi state party report observed that considerable progress has been made in the following thematic areas: gender and women’s rights, through the enactment of laws such as the Gender equality Act, the Trafficking in Persons Act; the Marriage and Divorce, Family Relations Act, among others and implementation of various policies and programmes; children’s rights through the enactment of the Child Care Protection and Justice Act, among other laws and a number of policies and programmes; human rights of vulnerable categories, for example through the enactment of the Disability Act, and implementation of various programmes and policies in such areas such as HIV and AIDS; civil and political rights, through guarantees of various fundamental freedoms, efforts to improve prison conditions, and measures to deal with issues of torture; and economic, social and cultural, through in particular the implementation of the Malawi Growth and Development Strategy (II), and various sectoral policies and programmes.

The Government of Malawi was also commended for the comprehensive consultative process through which the UPR state party report was compiled and the inclusiveness of the process. It was observed that various stakeholders including government ministries and agencies, civil society organisations, constitutional bodies and other stakeholders were involved in the process.

A total of 204 recommendations were received by the Malawi Government, out of which 137 enjoy the support of the Government of Malawi, i.e. were accepted, 13 were said to be already enjoying the support of Malawi, i.e. were already being implemented, 13 recommendations were pended for further examination by Malawi and provision of responses in due time, but no later than the 30th session of the Human Rights Council in September 2015, and 41 recommendations were noted by Malawi, i.e. rejected.
3.5 Education, Information and Training Activities

Malawi Human Rights Commission has a strong interest in issues pertaining to the application of the death penalty in Malawi. As already alluded to above, the Commission is taking the lead in the rehearing of sentences for all prisoners that were sentenced prior to the repeal of the mandatory death penalty. The Commission has also taken further steps to coordinate advocacy engagements towards the abolition of death penalty in Malawi. This is also in line with recommendations that the Malawi Government received during the review of the State Party Report on the International Covenant on Civil and Political Rights (ICCPR) as well as the Universal Periodic Review (UPR) in 2015.

During the Universal Periodic Review of the Human Rights Council on Malawi in May 2015, the Government of Malawi accepted a recommendation “to continue its efforts to review the cases of persons sentenced to death in the country and to commute all death sentences into alternative penalties, as well as to put in place a moratorium on the death penalty with a view to its future abolition.”

Currently, the issue of the death penalty under Malawian law is governed by section 16 of the Constitution of the Republic of Malawi (the Constitution). The Constitution proscribes the arbitrary deprivation of life, making an exception for circumstances where execution of the death sentence is imposed by a competent court on a person in respect of a criminal offence under the laws of Malawi of which he or she has been convicted. Thus the death penalty as a means of punishment is provided for in respect of various offences stipulated in the Penal Code, (Chapter 7:08 of the Laws of Malawi). The Commission therefore organized a one day Expert Conference on death penalty on 12th Nov, 2015. The conference provided an opportunity for delegates to discuss current international and regional trends in issues of death penalty and movements towards abolition. The conference commended the Malawi Government for coming up with a de facto moratorium on execution of death sentence but also called upon the Malawi Government to institute a de jure moratorium as a step towards death penalty abolition. The conference issued a communique that was shared with the Ministry of Justice and Constitutional Affairs.
3.6 Strategic Investigations

The Commission, on receipt of a complaint of violation of human rights, investigates the violation. Sometimes, on its own volition, the Commission does investigate issues of human rights violations.

In July 2015, MHRC carried out investigations in all the four administrative regions of the country to investigate complaints of excessive use of force by Malawi Police Service. What prompted the investigations were widespread reports of police officers using live ammunition on suspected armed robbers which resulted in deaths of some of the suspects. The Commission wanted to know if the police were acting within the boundaries of the law when carrying out such shootings and also to understand under what circumstances the police are allowed by law to use live bullets on suspects.

Malawi’s domestic legal framework recognises a “right to life” under Art 16 (1) of its constitution and the death penalty is allowed where it “cannot be deemed as arbitrary deprivation.” The Penal code of Malawi provides for the instances where, upon conviction, the death penalty can be applicable: Murder (section 201), Rape Not Resulting in Death (section 132), Robbery not resulting in Death section 301), Burglary and other offences not resulting in Death (section 309), treason (38), and Military Offense Not resulting in Death (the Defence Force Act of the Laws of Malawi (Number 11 of 2004)). Malawi prohibits the application of the death penalty to individuals who were under the age of 18 at the time the offense was committed and where a woman is convicted of an offense punishable by death, and is found to be pregnant, the sentence shall be life. (section 12 of the Penal Code).

The following were the specific objectives that the investigation was aimed at:

1) To establish the circumstances surrounding the occurrence of incidences where Police officers shoot suspected criminals to death or disable them and find out whether or not this is in line with the applicable laws and human rights standards,
2) To find out the comparative magnitude of the arbitrary deprivation of the right to life and other and human rights violations by the Police in different policing districts and cities in Malawi.
3) To establish the circumstances and the underlying driving force behind attacks on the Police officers by members of the general public.
4) Depending on the findings, to facilitate access to remedies by the concerned parties.
5) To establish the number of Police officers arrested for their involvement in criminal activities in the past two years and how the Malawi Police Service has been dealing with this challenge to control the situation.
6) To make recommendations to Government, the Malawi Police Service and relevant institutions depending on the findings of the investigation.

Based on the findings of the investigations conducted, MHRC came up with the following recommendations for consideration by the Government:

1) To attain and maintain high standards of professionalism in the Malawi police service, there is need to overhaul the recruitment procedures and stump out elements of corruption, nepotism, and insubordination.
2) Malawi Police Service must develop a comprehensive policy to deal with welfare issues concerning officers that get injured in the course of their duties. The policy should include issues of benefits for members of the deceased officer’s family and dependents. This policy should complement the current claims and benefits that are offered through the Ministry of Labour under the Workman’s Compensation Act.
3) Police Officers in the country are not motivated due to a number of factors such as low pay...
and lack of decent accommodation. Government must take appropriate steps to address these issues, including provision of decent accommodation for police officers.

4) Government must address the issue of resources for police officers to carry out their duties effectively. Communications and transport infrastructures are inadequate, impacting on the quality of police work; evidence handling and forensic capacities are inadequate.
Chapter Four:

CHILD RIGHTS

4.0 INTRODUCTION

Malawi is a party to the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child as well as other international and regional human rights agreements. Over the years, Malawi has recorded significant progress in the promotion and protection of children’s rights through various programmatic interventions. These efforts have been strengthened by the promulgation of various pieces of legislation such as the Child Care, Protection and Justice Act, 2010; the Marriage, Divorce and Family Relations Act, 2015; the Trafficking in Persons Act, 2015 and other relevant pieces of legislation. Notwithstanding the preceding, children in Malawi continue to face challenges to enjoy their rights and full protection of the law. As such, the successes have been weighed down by the challenges. In view of this, the Commission continued to implement activities aimed at promoting and protecting the rights of children. The Commission worked closely with various State and Non-State Actors to ensure that children fully enjoy their rights as discussed in this chapter.

4.1 Complaints Handling

In line with the mandate of the Commission as provided under section 129 of the Constitution and section 12 of the Human Rights Commission Act, (Cap 3:08 of the Laws of Malawi) to investigate violations of human rights accorded by the Constitution or any other law, the Commission investigated cases of child rights violations in the period under review. While some cases were handled by way of investigations, others were handled through litigation, mediation and referral to other appropriate institutions.

In 2015, the Commission continued to register increased cases of child maintenance where in most instances mothers or guardians complained against fathers of the children concerned for failure to provide maintenance support. Out of 41 cases which the Commission registered in 2015, 22 cases were on child maintenance. For the past 4 years, the trend has been the same where the majority of child rights cases which the Commission received were on child maintenance. The Commission has been investigating such cases in order to provide redress to the complainants. In view of this trend, the Commission notes that cases of failure by parents or guardians to provide maintenance support to the children continue to deprive such children the right to life, survival and development as well as education, among others.

During the 2013 Public Inquiry on Child Maintenance, the Commission noted that whilst the right of access to child maintenance is recognised by many and that to some degree it is being enjoyed by children in Malawi; there is also evidence that there are various challenges that claimants of child maintenance face. It was observed that one of the challenges that hamper effective realisation of this right is that its scope and nature are widely misunderstood by many. It was noted that not many people, including some Magistrates, are familiar with the Child Care, Protection and Justice Act (CCPJA) which is the principal legislation for child rights. Other categories of people that were similarly identified during the process as lacking sufficient knowledge of the CCPJA included Police Officers and traditional leaders. Further, the Commission noted that lack of enforcement of Court orders is a critical area of concern. It was found that court officials usually face mobility challenges to enable them enforce the orders of the courts on child maintenance. Similarly, the Commission noted that the Legal Aid Bureau that usually supports claimants of child maintenance through legal representation face a similar problem that hampers it from following up on non-compliant liable
persons. The public inquiry further revealed that in most cases, the amounts that courts order as child maintenance are insufficient to ensure the general welfare of the child. In view of this, the Commission will continue to handle cases of child maintenance and work closely with the justice system.

Further, apart from child maintenance cases, the Commission received various cases of children’s rights violations as highlighted below.

4.1.1 HRC/05/01/511: In the Matter of Sexually Abused Girl Child
The Commission received a complaint from Ms. A on behalf of child X against Mr. Y. The complainant stated that a 15 year old girl child X, her student at a Girls Private Secondary School in Lilongwe, was subjected to continuous sexual abuse by Mr. Y after he had promised her full support towards her education. The child X, coming from a resource constrained family, was initially a day scholar student at a government secondary school in Lilongwe. Mr. Y, who at the time was staying in the same locality of that of the child X in Lilongwe, removed the child X from a government secondary school on the basis that she was walking a long distance from home to school and made her enroll at a Girls Private Secondary School. In its investigations, the Commission established that Mr. Y had apparently told the girl to cheat her parents that it was a charity organization that had promised to fund her education at a Girls Private Secondary School, hence she needed to transfer from the government secondary school. The Commission further established that Mr. Y capitalized on the vulnerability of child X who was indeed walking a long distance to school.

It was noted that although within this context Mr. Y subjected the child X to constant sexual exploitation, he never supported her with school fees at a Girls Private Secondary School as earlier promised. Thus the child X confided the matter in the complainant before it was reported to the Commission. Following its investigations, the Commission involved Kanengo Police Station after which Mr. Y was arrested. Mr. Y was charged with defilement of girls under the age of 16 years contrary to section 138 (1) of the Penal Code and taken to Mkukula Magistrate Court where he was convicted and sentenced to 9 years imprisonment.

During the handling of the matter, the Commission worked closely with the Ministry of Gender, Children, Disability and Social Welfare; the Lilongwe District Social Welfare Office and Youth Net and Counselling (Yoneco) in order to provide social support services to the girl. Following conclusion of the case, the Ministry of Gender, Children, Disability and Social Welfare facilitated re-enrollment of the child X at the government secondary school where she was before and YONECO started providing school fees for her. At the close of the period under review, the child X had passed her 2015 Junior Certificate Examinations at the government secondary school and she was continuing with her education.

4.1.2 HRC/05/05/241: In the Matter of Children Burnt to Death at Nsundwe in Lilongwe
In July 2015, it was reported in the media of the death of 4 children at Comfort Children’s Home at Nsundwe on the outskirts of Lilongwe after the room in which they slept caught fire. The Commission investigated the matter on its own volition after noting that it disclosed several pertinent human rights issues regarding the rights of children as well as their best interests. Further, the Commission observed legal issues relating to the operations of Child Care Institutions in Malawi. In view of this, the investigations focused on the allegations that Comfort Children’s Home was operating irregularly in that it had not been designated by government through the Ministry of Gender, Children, Disability and Social Welfare as required under section 47 of Child Care, Protection and Justice Act, 2010.
In its investigations, the Commission established that Comfort Children's Home was operating irregularly in that it had not been designated by government through the Ministry of Gender, Children, Disability and Social Welfare as a private foster home as required under section 47 of the Child Care, Protection and Justice Act, 2010. It was established that the Manager of Comfort Children's Home, Mr. X, had applied to the Ministry of Gender, Children, Disability and Social Welfare to appoint his institution as a private foster home. However, the institution started to operate without government approval as per his application which had not been granted. It was further established that prior to the fire incident, Comfort Children's Home was operating with five residential children and 116 non-residential children. It was, however, noted that placement of children at the institution was not done in consultation with the Lilongwe District Social Welfare Office as is required under applicable provisions in the Child Care, Protection and Justice Act, 2010.

Further, it was established that four children aged between 5 and 16 years indeed died at Comfort Children's Home after the facility caught fire on the night of 4th July, 2015. At the time of compiling this report, Nsundwe Police Unit in Lilongwe indicated that investigations into the matter were still underway to establish the cause of fire. In view of the findings, the Commission formally referred the matter to the Malawi Police Service (MPS) with a recommendation that the Manager of Comfort Children's Home, Mr. X, should be prosecuted for operating an institution without the approval of government contrary to section 69 (e) of Child Care, Protection and Justice Act, 2010. At the close of the period under review, the MPS had not acted on the recommendation of the Commission.

4.1.3 In the case of the Republic vs Mateyu Salikuchepa (Criminal case number 997 of 2015)

In July 2015, it was reported in the media that a 40 year Malawian national identified as Mateyu Salikuchepa trafficked 21 children from Mozambique to Malawi. It was reported that on 29 July 2015, Salikuchepa was arrested by Blantyre Police at Wenela Bus Depot as he was about to leave for Mangochi with the 21 children. It was further reported that the children were recruited to work in farms in Mangochi District. The Commission followed the matter with keen interest and noted that following the arrest, Salikuchepa was charged with 9 counts of the offence of child trafficking contrary to section 79 of the Child Care, Protection and Justice Act, 2010. Following conclusion of trial, the accused person was convicted and sentenced to 2 years imprisonment for each of the 9 counts to run concurrently.

In view of the above, the Commission, noting that the sentence was lenient, joined the Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW) and made an application before the High Court of Malawi to review the matter in line with section 360 of the Criminal Procedure and Evidence Code which gives it (the High Court) powers to review cases from the lower court. The application was made on the basis that incidences of trafficking in persons, especially children, continue to be on the rise in Malawi and globally and that the practice has devastating consequences on children's rights. In view of the preceding, the MoGCDSW and the Commission requested the High Court to enhance the sentence to reflect the seriousness of the offence and aggravating factors therein. At the close of 2015, the High Court was yet to review the case.

4.1.4 HRC/05/18/07/BT: Chimwemwe Ngwalo v Evason Ngwalo

In 2014, the Commission litigated the matter in the High Court of Malawi in which the complainant, Chimwemwe Ngwalo, wanted distribution of matrimonial property with her husband, Evason Ngwalo. In 2013, the complainant had sought divorce from the Blantyre Magistrate Court on the basis that the respondent was subjecting her to various forms of abuse. At the time of lodging the complaint to the Commission in 2014, the complainant had been chased from her matrimonial home with the
three children aged 12, 16 and 19 years. The complainant was at the time waiting for the court's determination on her application for divorce at the Blantyre Magistrate Court. The Commission had investigated the matter and following its intervention, the court granted divorce to the complainant and ordered that the respondent should be providing K1, 500 as maintenance support for the children. However, the court refused to distribute the matrimonial property because it exceeded the lower court's jurisdiction and referred the matter to the High Court in Blantyre. It was within this context that the Commission proceeded to represent the complainant on the issue of property distribution and upward adjustment of the maintenance support for the children. The Commission finished litigating the matter in June 2014 and waited for the judgement until in October 2014 when the complainant died. A formal follow up was made with the High Court for delivery of the judgement. However, at the close of 2015, the judgement had not been delivered. The Commission continues to monitor the matter.

4.2 Education, Information and Training Activities
In line with its duties and functions as espoused under section 13 (1) (a) (b) (c) of 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. The activities focused on 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.

4.2.1 TRAINING OF DUTY BEARERS AND STAKEHOLDERS ON CHILD PROTECTION

4.2.1.1 Training of School 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. With funding from the United Nations Development Programme, the Commission continued to implement the programme. In view of this, a total of 132 head teachers were trained in the period under review. The expectation was that the training would help head teachers in the following aspects:

a. Develop effective and appropriate teaching skills in citizenship education such as critical thinking, decision making and participation.
b. Develop positive values such as justice, tolerance, democratic behaviour and equality in schools.
c. Use appropriate learner-centred methods of teaching such as case studies, problem-solving, group discussions in order to promote attitudinal change among learners.
d. Develop an awareness of the current issues and controversies relating to human rights and democracy in Malawi.
e. Develop a better understanding of the fundamental principles and values of democracy and human rights in Malawi.

Following the trainings, the head teachers drew up action plans for implementation to ensure that the programme improves respect for children's rights in their respective primary schools. From the time the programme started in 2010, a total of 1079 head teachers have been trained across the country.

4.2.1.2 Training of School Management Committees in Primary Schools
With funding from UNICEF and Save the Children International, the Commission trained a total of 1089 teachers who are members of School Management Committees in primary schools. The
training focused on child rights protection in schools. On the overall, the training aimed at equipping participants with the core competencies they need to effectively protect children’s rights in school context, including providing space for children to participate in decision making on issues that affect them. The expectation was that the School Management Committees as duty bearer structures would gain practical knowledge on how to safeguard and foster the rights of children in primary schools. The training also linked members of School Management Committees to Community Child Protection Structures such as Community Child Protection Committees and Community Victim Support Units existing in their respective areas and districts.

Through the training, establishment of Students’ Councils was initiated in order to promote learners’ participation in school governance in the schools that were reached. The participants, who included head teachers, deputy head teachers, sections head teachers and Primary Education Advisors, were drawn from 555 primary schools covering 39 Education Zones in Karonga, Mangochi, Lilongwe, Machinga and Phalombe Districts.

4.2.1.3 Training of Community Support Groups and other stakeholders on Child Protection

In order to contribute towards strengthening child protection systems at community level, the Commission trained Community Support Groups (CSGs) on Child Protection. The main aim was to build the capacity of CSGs in preventing, identifying and responding to cases of various forms of child abuse in line with applicable laws. A total of 125 participants from Dedza District were trained. The participants were also linked to community structures on child rights in their respective areas. The Commission expected that trainings would help CSGs contribute in the fight against various forms of child abuse in communities, some of which go unreported. Further, the Commission trained health workers at Kasina Health Centre in Dedza District. The training focused on child protection and child rights programming.

A total of 80 health workers were trained. The expectation was that the training would help the health workers contribute to child rights protection especially when confronted with cases that require their attention. Furthermore, the Commission trained 12 members of staff of an international non-governmental organization, Theatre for a Change, on child rights. The aim of the training was to build the capacity of participants on child rights protection.

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

In line with the Commission’s efforts to ensure increased knowledge of human rights and their corresponding responsibilities among the people in Malawi, the Commission conducted a number of community sensitization meetings on the rights of children in Lilongwe, Karonga, Machinga, Dedza, Mwanza, Phalombe and Nkhata-Bay Districts. These sensitization campaigns targeted rural communities who in most cases do not have much access to information on human rights.

The primary aim was to raise awareness on issues of child rights and call for concerted efforts in child protection in rural communities. The meetings were also aimed at empowering communities to prevent, identify and respond to various forms of child abuse. The meetings equipped the people on the rights of children and how to safeguard such rights as well as the responsibilities that go with such rights.

The expectation was that traditional leaders and other duty bearers at a community level would strengthen their working relationship with the Police and other child centred community structures in dealing with children’s rights violations. During sensitization campaigns, participants were exposed to the provisions of the Child Care, Protection and Justice Act, 2010; the Penal Code and other
relevant pieces of legislation that protect children. In Machinga District in particular, the sensitization campaigns also targeted areas where cases of killings and abduction of persons with albinism were reported and the Commission mounted these campaigns in conjunction with the Malawi Police Service. The campaigns also provided opportunity to strengthen community child protection structures in 32 communities and linked them to members of communities regarding their role in child protection. It was expected that the initiative of linking the communities with community structures, the Police and other actors would improve reporting of cases of child rights violations.

The sensitization campaigns reached a total of 14,675 people segregated as 7,950 men and 12,612 women as well as 80 boys and 90 girls from 37 communities in the targeted districts. Further, a total of 10 volunteers in the targeted districts were identified to champion child rights in their respective communities.

4.2.3 Child Trafficking Campaigns in Schools

With support from the Norwegian Church Aid, the Commission conducted anti-child trafficking campaigns in secondary schools with an aim of raising awareness on the existence of various forms of child trafficking and how the new law, trafficking in Persons Act, 2015, can be used to deal with this human rights challenge. The campaigns targeted schools in Mangochi and Machinga Districts. The campaigns, which were conducted in collaboration with Eye of the Child, Child Rights Advice Centre, the Malawi Police and the Media, reached out to 506 students.

4.3 Dissemination of Universal Periodic Review Recommendations

The Commission in conjunction with Save the Children International and Non-Governmental Organization Coalition on Child Rights popularized the 2015 United Nations Universal Periodic Review (UPR) recommendations for Malawi. The popularization workshop, which was held in Lilongwe, focused on recommendations on children issues. The popularization was undertaken after the Government of Malawi had appeared before the United Nations Human Rights Council from 5th - 8th May, 2015 for a review on its human rights record. During the UPR session, Government had accepted 132 recommendations, out of which 14 related to children. Among others, the child-focused
recommendations related to the implementation of the Marriage, Divorce and Family Relations Act on ending child marriage as well as other recommendations on ending child labour, criminalizing all forms of sexual abuse against children, implementing the action plan on vulnerable children and registration of children.

The expectation was that by disseminating the recommendations, both State and Non-State Actors would be empowered to contribute towards implementation of the recommendations through their programming and also monitor compliance at various relevant levels. The popularisation workshop targeted participants from the Ministry of Gender, Children, Disability and Social Welfare; District Social Welfare Officers; the Malawi Police Service and Civil Society Organizations that work in the area of children rights as well as the media.

4.4 National Symposium on Alternative Care and Engagement with Child Better Care Network

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 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 such 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.

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 institutions as well as poor standards of sanitation. The expectation was that Government would take a leading role to ensure that the institutions operate according to law.

Further, the Commission supported the Child Better Care Network (BCN) which brought together institutions that work in the area of child rights in Malawi and are members of the BCN. This was part of the Commission’s resolve to continue building networks with other key stakeholders on issues of children. This provided a forum to reflect and discuss on how best the network can collaborate at national level to ensure buy in from all the members on issues of alternative care. At the time of compiling the report, BCN was developing an action plan and strategy on improving collaboration, research and information sharing on alternative care for children while advocating for technically sound policy and programmatic action at national level. This was expected to contribute to the strengthening of the network and improve its effectiveness on issues of children in alternative care.

4.5 Interface discussion with Machinga District Child Protection Committee

With funding from Save the Children International, the Commission held an interface discussion with Machinga District Child Protection Committee whose primary objective was to strengthen child protection mechanisms in the district to protect children from various forms of violations. This initiative was undertaken against a background of a series of workshops which the Commission had previously conducted with Primary School Management in various schools in the district. The workshops, which were aimed at building the capacity of head teachers and section heads in selected primary schools on issues of child protection, had revealed increased trend of cases of violations of children’s rights in the district, particularly issues of sexual violence on girls.

It was, therefore, against this background that an interface discussion was held with the Machinga District Child Protection Committee (the Committee) on how best to improve response on issues
of children while building synergy with other relevant players in the district. The initiative provided an opportunity for the Committee to examine its response strategy on child rights violations in the district and redesign a holistic approach that would bridge the gaps in the area of child protection. It was expected that this would ultimately contribute to improvement of child protection mechanisms in the district. The interface discussion targeted participants from Machinga District Social Welfare Office; Machinga District Education Manager’s Office; Machinga Police Station; Machinga Action Aid Office; Liwonde Hospital; Machinga District Council, Machinga District Labour Office and Machinga Magistrate Court.

4.6 Support to the functions of the Child Case Review Board
Although the Child Care, Protection and Justice Act was enacted in 2010, the Child Case Review Board that was established by the Act with the oversight mandate on all children in need of care and protection, has not been fully operationalized by government. According to the Act, The Board is supposed to have its own funding approved by Parliament and to meet often and at such times and places as the Chairperson shall determine but not less than four times in a calendar year. Currently, the Board does not have any financial support from Government. In 2015, the Commission supported the Board as follows

(a) The Board held only 2 meetings in 2015 in August and November which were supported by the Commission. Through such meetings, the Board validated guidelines and regulations on alternative care, discussed conditions and situation of children at the reformatory centres and in other Child Care Institutions and other matters.

(b) The Board visited Mpemba and Chilwa Reformatory centres to appreciate the situation of the ground. Recommendations were made to appropriate institutions and cases of children were reviewed by the Board.

(c) The Board held meetings with the District Councils in Dedza, Mangochi and Blantyre to discuss the quality of care in the Child Care Institutions and how best to strengthen district monitoring mechanisms to ensure that CCIs operate in line with the law. Among others findings in the CCIs, topical issues that came out included poor sanitation, overcrowding in dormitories, use of untrained care givers, poor record keeping and inadequate efforts to ensure that children maintain links with their relations. Following the meeting, the reports in all the targeted districts were adopted by the Districts Technical Working Groups on children for improvements to be done in line with Section 70 of the Child Care, protection and Justice Act. Ultimately, this initiative fed into efforts to improve District Child Monitoring Systems of CCIs.

4.7 Promotion of Accountability of Child Care Institutions Network
The Commission supported accountability meetings of CCIs in Thyolo, Blantyre and Lilongwe Districts. The meetings, which reached a total of 80 participants, were critical as they provided a forum for attendees to discuss how best the situation can be improved in their respective CCIs. As such, the CCIs networks also resolved to work towards implementing the recommendations that were made to them following a 2014 joint monitoring exercise by the Commission and the Ministry of Gender, Children, Disability and Social Welfare.

The networks in the respective districts resolved to draft Terms of Reference to guide their operations and engage in more activities of visiting CCIs as a way of encouraging compliance with the required standards. In view of this, the networks are now responsible for monitoring CCIs in their respective districts and share best practices. This has made it possible for their findings to be tabled at District Executive Committee level in line with section 70 of the Child Care, Protection
and Justice Act, 2010. The establishment and strengthening of CCI networks has contributed to the strengthening of child monitoring systems of CCIs at district level.

4.8 National stakeholder’s Meeting on Alternative Care
As one way of sharing notes on the provision of quality alternative care in CCIs, the Commission held a national stakeholder’s meeting in Blantyre. The CCIs stakeholders’ meeting was primarily aimed at sharing best practices in ensuring provision of quality care in alternative care institutions.

The meeting drew participation from District Social Welfare Officers and CCIs from Blantyre, Mangochi, Machinga, Balaka, Zomba, Chiradzulu, Phalombe, Mulanje, Mwanza, Neno, Chikhwawa, Nsanje and Thyolo Districts. During the meeting, the Commission made a presentation on 2014 CCI monitoring findings specifically for institutions in the eastern and southern regions. Further to this, all DSWOs presented on the current situation of CCIs in their respective districts. The following developments were noted during the meeting.

(a) More institutions have been following up on their registration with the District Social Welfare Officers (DSWOs).
(b) Although the situation has not reached desired levels, there is general improvement on sanitation in CCIs.
(c) There is improvement in child-family relations linkage as some children are now allowed to go for holidays.
(d) There is improvement in collaboration between some CCIs and DSWOs in the admission of children to institutions.
(e) General communication between CCIs and DSWOs has improved.
(f) Some institutions have now introduced re-integration programmes.

As a way forward, it was resolved that:

(a) CCIs and the DSWOs should ensure that all communications regarding institutional care are first dealt with at district level before being referred to the Ministry of Gender, Children, Disability and Social Welfare Headquarters in Lilongwe.
(b) It was also agreed that all DSWOs should work as a team on matters of child referrals from one district to the other with proper monitoring mechanisms.
(c) The DSWOs were also tasked to address the issue of overcrowding of children in institutions by enforcing the concept of re-integration, thereby reducing the number of children institutional care.
(d) The CCIs requested that government should show its commitment to the process by officially registering the institutions and the services they offer to children with reasonable timelines.

4.9 Human Rights Monitoring
Pursuant to section 129 of the Constitution which gives the Commission the function of protection of human rights, the Commission undertook monitoring activities on issues that have a direct bearing on the rights of the child.

4.9.1 Monitoring the Impact of Sand and Quarry Mining on the Enjoyment of Children’s Rights
In line with its duties and functions to protect more particularly the rights of vulnerable groups of people such as children, the Commission undertook a monitoring exercise on children involved in
extractive industry. The monitoring exercise focused on assessing the impact of quarry and sand mining on children involved in the industry and how authorities at community and district levels are dealing with the impacts. On the basis of the findings, the monitoring exercise was also aimed at helping the Commission generate recommendations to relevant authorities at different levels on how children can be protected from the negative impacts of small scale mining activities.

The monitoring exercise targeted Lilongwe, Ntcheu and Blantyre Districts. These districts were selected because of the prevalence of children’s involvement in small scale mining activities of quarry and sand, due to, among other reasons, a boom in the construction industry which creates a huge demand for quarry and sand. The exercise covered a total of 5 and 11 quarry and sand mining sites respectively, translating into a total of 16 mining sites for the three targeted districts.

Among others, the following were the key findings of the monitoring exercise:

I. Children are involved in quarry and sand mining activities because of inadequate parental support to meet their needs; direct parental influence for children to contribute to family income; peer pressure from some children who are already involved in the mining activities and that children in child headed families find the mining activities lucrative to support their siblings.

II. Quarry and sand mining activities deprive children of their right to education as most of them absent themselves from school while others completely drop out of school with a view to concentrate on the mining activities to generate more income.

III. Children involved in quarry and sand mining suffer exploitation at the hands of adult customers who offer lower prices for sand and quarry as compared to prices that are offered to adults who are also involved in such mining activities. Similarly, in cases where children are hired by adults to help them mine quarry and sand, the former are offered low wages as compared to the work done because they have little negotiating power for higher wages.
IV. There are weak monitoring mechanisms by Government through the District Labour Offices to track the various mining sites where children are involved in quarry and sand mining activities. Furthermore, there are no specially designed programmes by the District Labour Offices to protect children involved in such mining activities.

V. The mining activities expose children to potential health hazards such as water and airborne diseases.

VI. The findings provided a basis on which to engage Government and other non-State actors at various levels to take corrective action on the situation in order to protect children involved in small scale mining activities.

4.9.2 Monitoring Child Rights in Schools
Following a series of trainings which the Commission in conjunction with the Malawi Institute of Education (MIE) had conducted in 2014, a monitoring exercise was undertaken to assess the level of implementation of the action plans which participating head teachers had drawn up for their respective schools. The monitoring exercise was conducted jointly with the MIE and covered targeted primary schools in Zomba, Blantyre, Machinga, Mangochi, Lilongwe, Mchinji and Kasungu Districts. The monitoring exercise focused on how the head teachers were implementing their child rights focused action plans for the benefit of pupils in schools and how such pupils were participating in school governance processes through the Students’ Councils.

It was noted that while some head teachers were able to implement their action plans, others needed constant monitoring and coaching for them to do better and improve respect for children’s rights in their respective schools. It was also noted that Students’ Councils were playing a central role in some schools with regard to participation in decision making on issues affecting them. The Commission’s resolve is to ensure that the concept of Students’ Councils should be scaled up to more primary schools and ultimately form part of the primary education curriculum. In view of this, the Commission will continue to work closely with the Ministry of Education, Science and Technology and the MIE on how best this can be operationalized. On the overall, findings of the monitoring exercise informed the Commission on how the programme can be best managed so that it achieves its intended outcomes.

4.9.3 Advocacy on Child Friendly Legislation
In line with its responsibility to recommend the adoption of new legislation or the amendment of legislation as provided under section 14 (c) of the Human Rights Commission Act, 1998 (Cap 3:08 of the Laws of Malawi), the Commission advocated for the enactment of some child related Bills to strengthen Malawi’s legal framework on issues of child protection.

4.10 Advocacy on the Enactment of Adoption of Children Bill (Amendment)
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 an advocacy meeting in Lilongwe with the CCRB on the Adoption of Children Bill. Under applicable provisions in the Child Care, Protection and Justice Act, 2010, the CCRB has a mandate to ensure a comprehensive child protection system in Malawi, particularly on children in conflict with the law and those in need of care and protection. One of the gaps in that regard is lack of a comprehensive law to regulate international adoption of children. Currently, Malawi uses the 1949 Adoption of Children Act which has gaps to regulate issues of international adoption of children. It was, therefore, against this background that an advocacy meeting was held with the CCRB to highlight the extent of the problem, challenges being faced and the possible way forward.
The meeting also targeted participants from the Malawi Police Service, Judiciary, Law Commission, Office of the Ombudsman, National Registration Bureau, Ministry of Gender, Children, Disability and Social Welfare; District Social Welfare Officers; Child Care Institutions; the Civil Society and the Media. As a way forward, members resolved to join hands with the CCRB to advocate for the enactment of the Adoption of Children Bill and the ratification of Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption.

4.11 Advocacy on the Enactment and Gazetting of the Trafficking in Persons Act, 2015
The Commission conducted advocacy campaigns for the speedy enactment of the Trafficking in Persons Bill to adequately deal with human trafficking which largely affects women and children. The Bill was subsequently passed into law. In view of this, the Commission made consistent follow ups with the Ministry of Home Affairs and Public Security to speed up the process of gazetting the law. The law was finally gazetted and it took effect on 1st November, 2015.

4.12 Commemoration of the 2015 Day of the African Child
The Commission in partnership with Plan Malawi joined the rest of Africa in commemorating the Day of the African Child which falls on 16 June every year. The 2015 commemoration coincided with the 25th anniversary of the adoption of the African Charter on the Rights and Welfare of the Child (the African Children’s Charter or the ACRWC). The theme for the year’s celebration took into account views of children who suggested that it should be related to child marriage. The international theme was: ‘25 Years after the Adoption of the African Children’s Charter: Accelerating our Collective Efforts to End Child Marriage in Africa’. Malawi commemorated the day under the theme “Accelerating our collective efforts to end child marriage in Malawi”. Malawi also launched the Plan of Action for Vulnerable Children as part of the commemoration.

The day provides an opportunity to consolidate efforts for addressing challenges that impede the maximum realization of children’s rights in African countries. The day also provides an opportunity for Government in Africa to renew their commitment in addressing the plight of children.

The Commission commemorated the day at Air Base Primary School in Lilongwe where a an interface discussion with children was held so that children share their views and solutions for ending child marriage and an advocacy school-based events on ending child marriage facilitated by children. Children made a statement after the interface discussion on how child marriages affect their lives, the urgent need to improve education system and possible solutions to end child marriages.

There were testimonies provided by children rescued from child marriages, roles models to encourage children especially girls to stay in school. Various duty bearers such as traditional leaders, school management, representatives from Ministry of Education and Ministry responsible for children, Malawi Police Service and Human Rights Commission also made pledges to play their rightful role in combating child marriages.
Chapter Five:

DISABILITY AND ELDERLY RIGHTS

5.0 INTRODUCTION
Malawi is party to the Convention on the Rights of Persons with Disabilities as well as other international and regional human rights agreements that protect and promote the rights of Persons with Disabilities and the Elderly. Over the years, Malawi has registered tremendous progress in promoting and protecting these rights. This progress has been due to a number of interventions including the promulgation of various pieces of legislation such as the Disability Act, 2012. Despite Malawi registering remarkable progress, it is noteworthy that persons with disabilities and the elderly continue to face challenges in enjoying their rights and full protection of the law. In this regard, the Commission continued to implement activities aimed at promoting and protecting the rights of Persons with Disabilities and the Elderly. The following sub-sections provide an update on the activities the Commission carried out in 2015 in promoting and protecting the rights of PWDs and the Elderly.

5.1 Complaints Handling
In 2015 the Commission received and registered 29 complaints on violations of the human rights of persons with disabilities and the elderly. Twenty-six (26) of these complaints were on disability rights violations and the remaining 3 were on violations of rights of elderly persons. The 29 complaints registered in 2015 present a sharp rise from 12 complaints registered in 2014, representing 141.67% increase in the complaints registered under the disability and elderly rights thematic area.

The major contributing factor to the sharp rise in the complaints registered under the Disability and Elderly Rights has been the increased prevalence of atrocities perpetrated against persons with albinism early in 2015. This unwelcome situation propelled the Commission to conduct several awareness raising campaigns and sensitization meetings on the rights of persons with albinism, including those with other forms of disability, throughout the country.

Consequently, visibility of the Commission in the rural communities was enhanced and members of the community were encouraged to lodge their complaints with the Commission on human rights violations they had suffered.

Besides the activities that were carried out by the Commission in the fight against the attacks, abductions and killings of persons with albinism, several other stakeholders – governmental and non-governmental – intervened in various ways to curtail the abuses and violations of human rights of persons with albinism. This collective approach helped to empower members of the rural communities, including those with albinism and disabilities, to claim and demand their rights.

The increased number of complaints registered on disability and elderly rights violations should be seriously taken as a true reflection of the abuses and human rights violations that persons with disabilities, those with albinism and the elderly inclusive, are suffering in the rural communities. 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 and older persons in the country. This is clearly manifested in the increased number of cases lodged with the Commission under the disability and elderly rights thematic area in the year 2015.

The following section highlights cases of violation of the rights of persons with disabilities and the
elderly which the Commission handled in 2015.

5.1.1 The Systemic Human Rights Violations and Attacks against Persons with Albinism in Malawi

In January 2015, the Association of Persons with Albinism in Malawi (APAM) documented several cases of persons with albinism being tricked, missing, abducted, kidnapped and killed by unscrupulous people in a number of districts in Malawi, including Mulanje, Blantyre, Zomba, Machinga, Balaka, Dedza, Mchinji, Mzimba, Karonga and Chitipa. This was regarded to be serious violations of the right to equality and non-discrimination, the right to personal liberty, and the right to life as provided for under sections 20, 18 and 16 respectively of the Constitution of the Republic of Malawi. APAM requested the Commission to investigate and provide urgent recommendations for action on the situation.

The Commission carried out investigations in the prone districts of Machinga, Zomba, Mulanje and Blantyre. The Commission interviewed members of the victims’ families, key informants, traditional leaders, and authorities from police stations. The Commission also interviewed some officials from APAM and Federation of Disability Organisations in Malawi (FEDOMA).

The Commission established that lives of innocent children and women with albinism had been arbitrarily taken away through merciless killings. Some of the suspects were identified and brought to book for criminal litigation in courts of law. It was also established that there was very low and slow response from various sectors, including the state, to addressing the issue.

The Commission also established that persons with albinism were restricted in the manner they were carrying out their various social activities. This was predominantly due to the insecurity that had rocked their community. It was also established that their rights to economic activities and education was being violated.

In view of the findings herein above, the Commission recommended that the Government of Malawi should swiftly respond to the emergent atrocities by, among other things, ensuring that the Malawi Police Service has adequate resources to provide security for all persons with albinism in their communities, resource centres and schools. It was also recommended that the Government of Malawi, through the Malawi Police Service, the Department of Public Prosecution and the Judiciary, should fast track the investigation and prosecution of the cases of attacks and killings of persons with albinism.

The Commission also recommended that human rights awareness campaigns should be conducted throughout the country on the rights of persons with albinism and the major players should be the Government of Malawi, through the Ministry of Gender, Children, Disability and Social Welfare, the Civil Society Organisations (CSOs) and the Malawi Human Rights Commission.

The Commission further recommended that the Malawi Police Service Community Policing initiative should be enhanced in the local communities to ensure security of women and children with albinism as they are mostly the target group of kidnappers and killers.

5.1.2 X (for Y, a woman with a disability) versus Z

The Commission received a complaint in which a woman with a physical disability in Ntcheu District had her 2 acres garden sold by her maternal grandfather to a lady in a neighbouring village without the owner’s consent. This matter had earlier on been resolved a Group Village Headman (GVH) in
favour of the complainant. The group village headman also advised the complainant to take the matter to any human rights organization for further resolution in the event that the respondent and the buyer refused to have the garden restored.

The respondent and the buyer defied the group village headman’s order and refused to give back the garden to the owner. The Commission regarded the case as premised on violation of the right to property, the right to economic activity, the right to development and the right to equality as provided for under sections 28, 29, 30 and 20 respectively.

Following the findings, the Commission recommended that it should engage the incumbent group village headman in the area to take up the case for either enforcing the ruling made by the then acting group village headman or hear the case once again and resolve it accordingly and expeditiously considering that the rainy season was forthcoming at that time of the year. It was also recommended that the Commission should immediately follow up with group village headman on the progress and outcome of the case.

The Commission also recommended that it should plan for sensitisation meetings and awareness raising campaigns on rights of persons with disabilities and on the importance of upholding and enforcing decisions or rulings made by traditional leaders considering that such decisions or rulings affect the rights and freedoms or welfare of community members. The Commission was still monitoring implementation of its recommendations by the concerned parties.

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. In 2015 the Commission monitored the implementation of Disability 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.

The monitoring exercise found that since Malawi enacted the law, some strides have been made and continue to be made in meeting the needs of persons with disabilities. This notwithstanding, persons with disabilities still face numerous challenges when it comes to the enjoyment of their fundamental human rights and freedoms that are laid down in the Act as well as the CRPD. Malawi Council for the Handicapped (MACOHA) implements a Community Based Rehabilitation (CBR) Programme which is in selected districts. 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. Some of the main monitoring findings include:

a. Lack of adequate funding to the Department of Disability and Elderly Affairs (then Ministry of Disability and Elderly Affairs) – the custodian of the Disability Act – over the years continues to negatively affect the implementation of the Disability Act.

b. Lack of access to basic and essential services such as education, health and public transport remains a big challenge for persons with disabilities. For instance 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. Similarly public transport in the country remains completely inaccessible to persons with disabilities.

c. 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 and the newly introduced Decent and Affordable Housing Subsidy Programme.

d. 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, stigmatization and prejudice and challenges to access disseminated employment information which is often in inaccessible formats.

e. 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 braille 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 disabilities live.

f. 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.

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.

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 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). At the time of compiling this report the engagement process with some state authorities
was still on going.

5.2.3 Monitoring Elderly Homes

As one way of fulfilling its statutory mandate, as per sections 129 and 130 of the Constitution and
section 12 of the Human Rights Commission Act, the Commission is empowered to exercise unhindered
authority to visit established homes of elderly persons and monitor human rights adherence. In
August 2013, the Commission conducted a situational analysis on the rights of older persons in the
country. Its main objective was to uncover distinct challenges and obstacles faced by older people in
the enjoyment of their rights and freedoms and make appropriate recommendations on addressing
the same. The analysis revealed that both duty bearers and right holders lack adequate knowledge of
rights of elderly persons, and a lot of human rights concerns on the rights of elderly persons were reported in the surveyed districts.

In 2015 the Commission conducted a monitoring exercise on some selected elderly homes in Karonga, Rumphi, Mzimba, Lilongwe, Mchinji, Dedza, Salima, Balaka, Machinga, Thyolo and Chikwawa. This was basically a follow up on the situational analysis conducted in 2013 and with an overall objective of checking adherence to international standards by duty bearers and enjoyment of human rights by right holders, the elderly persons.

Through the monitoring it was established that the country does not have properly established and designated elderly homes probably because of extended families. Most places that are called elderly homes are just day shelters where elderly people go to get food and temporary shelter.

The monitoring also established that elderly persons in the country suffer from various forms of abuse and discrimination. They are denied access to safety nets programmes such as Farm Input Subsidy Programmes (FISP), Public Works Programme (PWP), Social Cash Transfer Programme and the newly introduced Decent and Affordable Housing Subsidy Programme.

Additionally, elderly people are victims of abuse and discrimination as they are usually accused of practicing witchcraft. This has led to some of them losing their land and property as they are forced to leave their homes in fear of being killed.

From these findings the Commission recommends that:

a. The Government of Malawi, through the Department of Disability and Elderly Affairs in the Ministry of Gender, Children, Disability and Social Welfare, should embrace to do more on the welfare of elderly persons in the country especially in terms of policy direction. Government should expedite the adoption of the National Policy on the Elderly which is currently in draft form, and there is need for popularization of elderly persons’ national policy documents;

b. In conjunction with other actors such as the Commission, the Government of Malawi, through the Ministry of Information and Civic Education, should increase awareness on the rights of elderly persons in Malawi. There is need for a national sustained awareness campaign on elderly rights issues in order to curb the high level of abuse and violence perpetrated against elderly persons;

c. The Law Commission should expedite the review of the Witchcraft Act of 1911, and there is need for the Ministry of Gender, Children, Disability and Social Welfare, and other concerned stakeholders to lobby for the enactment of legislation on elderly persons care, justice and protection;

d. The Government of Malawi should increase funding allocation to the Department of Disability and Elderly Affairs in the Ministry of Gender, Children, Disability and Social Welfare so that the Department is enabled to plan, organize and implement programmes and activities for elderly persons;

e. The Government of Malawi should embrace establishing district-level facilities for implementation of interventions on the plight of elderly persons, for instance, the plight of elderly persons who are taking care of their orphaned grandchildren. There are a number of cultural, physiological, socio-economic and psychological issues that affect elderly persons;

f. The Government of Malawi should introduce a social protection programme for elderly persons that will provide them with social benefits such as food, shelter, clothing and beddings. There is an increased number of elderly persons seeking socio-economic assistance
in the country;

5.2.4 Training and development of a monitoring tool on UNCRPD
In August 2014, the Commission participated in a training workshop on “Monitoring the promotion and protection of the rights of persons with disabilities”, for National Human Rights Institutions (NHRIs) in Africa. The training workshop was organised by the Secretariat of the Network of African National Human Rights Institutions (NANHRI) in partnership with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) and was hosted by the Uganda Human Rights Commission. Kampala, Uganda.

The workshop developed a monitoring tool to be used by African NHRIs with the overall objective strengthen the monitoring capacities of Africa's NHRIs, particularly in respect of monitoring in terms of Article 33 of the UN Convention of the Rights of Persons with Disabilities (CRPD) through the development of a monitoring tool for African National Human Rights Institutions. The Commission successfully pre-tested the monitoring tool.

In September 2015, the Commission attended a validation workshop on monitoring tool where feedback on the monitoring toll was provided. The monitoring tool is currently being finalised by the NANHRI.

5.3 State Party Reporting

5.3.1 Preparation of State Party Report and Alternate 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 was ratified. Notably, this initial report had been delayed by three (3) years. In this regard, Malawi will submission of its combined initials and second report was scheduled for 2015.

The Commission plays a major role in the preparation of the State Party Report and submission of its Alternate Report. This is against the backdrop the report is written pursuant to the Commission role as an independent National Human Rights Institution established under Chapter XI of the Constitution of the Republic of Malawi as read with section 12 of the Human Rights Commission Act.

Section 14 of the Human Rights Commission Act in particular mandates the MHRC to inter alia:

(a) Contribute to the reports which Malawi is required to submit pursuant to treaty obligations and, where necessary, express its opinion on the subject matter but always with due regard to its status as an independent national institution.

(b) Promote the harmonisation of national legislation and practices with international human rights instruments to which Malawi is a party and to promote and monitor their effective implementation.

(c) Co-operate with agencies of the United Nations, 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.

The Commission, therefore, provided technical support to the preparation of combined Malawi’s
Initial and Second State Party Report on UN CRPD. In addition, the Commission has prepared its Alternate Report. Both reports are ready for submission to the Human Rights Council of the United Nations.

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 Thematic Discussions Sessions on Human Rights Based Approaches with Directors of Planning and District Social Welfare Officers
The Commission with financial support from European Union (EU) organized thematic discussions with District Directors of Planning and District Social Welfare Officers which took place at Lilongwe Hotel from 17th - 18th November, 2015. Participants to the discussions sessions were drawn from Karonga, Chitipa, Mzimba, Rumphi, Nkhatatabay, Mchinji, Dedza, Dowa, Lilongwe, Chikhwawa, Phalombe, Machinga and Thyolo.

Among others, the thematic discussions were aimed at:

(a) Equipping participants with the knowledge on disability rights as provided in International Human Rights Instruments, laws and policies on disability;
(b) Building capacity of participants on disability mainstreaming and inclusive development;
(c) Assessing the extent to which disability issues are considered at district level in development, planning and implementation, and
(d) Equipping participants with knowledge on monitoring and implementation of Convention on Rights of Persons with Disabilities.

Cognizant of the various issues that emerged during this discussion meeting the Commission recommended the following:

(1) Government through the Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW) should urgently consider devolving the functional and financial aspects of the Department of Disability and Elderly Affairs to the local councils in the spirit of decentralisation. This will facilitate disability mainstreaming at the local council level.
(2) The Ministry of Local Government and Rural Development should ensure that key personnel in all local councils in Malawi should be oriented on rights of persons with disabilities and disability mainstreaming.
(3) All local councils should consider developing district level disability mainstreaming strategies to guide mainstreaming of disability in district level development programmes.
(4) MHRC should conduct disability rights and disability mainstreaming orientation exercises for personnel in the local councils and the DECs in the districts.
(5) MHRC should monitor the implementation of the Disability Act 2012 and the CRPD in the local councils.
(6) All the newly constituted local councils should be oriented on disability law, policy and practices as well as disability mainstreaming.
(7) Staff in district councils should establish disability focal points and where such arrangements exist under the banner of the DEC this should be strengthened.
(8) All local councils’ personnel and other public offices at the district level should train Sign
Language interpreters to assist persons with hearing impairments in accessing public services.

(9) All local councils should register all children with disabilities within their area of jurisdiction in line with section 72 (1) of the Child Care, Protection and Justice Act 2010.

(10) All local councils should strive to keep a register of all persons with albinism within their area of jurisdiction and the councils should also institute district level protection structures to protect persons with albinism from attacks, kidnappings, trafficking, killings and other forms of human rights violations.

5.4.2 Community Sensitization and Discussion meetings in T/A Kawinga, in Machinga on Abductions and Killings of Persons with Albinism

In response to the abductions and killings of persons with albinism in the Eastern Region of Malawi, the Commission organized some sensitization meetings in T/A Kawinga, Ntaja in Machinga on the 2nd of March, 2015. T/A Kawinga was chosen due to the high number of reported cases on the abductions of persons with albinism. Among others the meetings were attended by chiefs, religious leaders, members of the Village Development Committees, teachers, children, men and women.

The sensitization meetings were aimed at creating public awareness on the universality of human rights and at the same time call for an end to discrimination of persons with albinism in Malawi and also empower communities to detect and report suspicious individuals and acts that may lead to the abductions and killing of persons with albinism in the area.

The meeting identified some key community members as focal persons to link with the Commission, the Police and relevant authorities on matters to do with human rights violations for persons with albinism in the area.

5.4.3 Public Awareness Campaigns in Karonga

The Commission with funding from UNICEF organized and conducted some public awareness campaigns on rights of persons with disabilities with a focus on rights of persons with albinism in Malawi. The areas that were targeted include Wiliro trading centre, Mlare market, Kasangamala trading centre, Wovwe market and Ngana FP School. Karonga was chosen because of its vulnerability due to the fact that it is a border town, its involvement in the mining industry and its prevalent cultural practices. The awareness campaigns were attended by people from all walks of life including political leaders, chiefs, businessmen, religious leaders, children, women and men. The campaigns reached out to approximately 5,000 people.

5.4.4 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 organized by a local
NGO – Disability HIV and AIDS Trust (DHAT) – focusing on the UNCRPD domestication and implementation of article 25 of the CRPD in Malawi. This workshop was specifically organised to discuss and learn from Persons with Disabilities some of the challenges that they encounter in terms of access to health care services in terms of HIV/AIDS management in Malawi.

Some of the main challenges that were identified during the workshop include; inaccessible structures; lack of privacy; lack of access to information; lack of access to Sexual and Reproductive Health Rights; and negative perceptions about persons with disabilities especially for women. Following this meeting it was agreed that the Ministry of Health should come up with a report on the challenges and submit to relevant authorities within the Ministry. It was also agreed that there is need to intensify public awareness programmes on rights of persons with disabilities among hospital staff. The meeting was attended by DHAT, the Commission, Ministry of Health, FEDOMA and representatives of persons with various forms of disabilities.
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, and protection of economic, social and cultural rights of the people in Malawi. The ICESCR promotes a number of economic, social and cultural rights such as, the right to food, housing, water, health, education and others. Article 2 of the ICESCR stipulates that each State Party to the Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures.

The principle of progressive realization acknowledges the financial constraints State parties may face. However, it also imposes an immediate obligation for the State to take deliberate, concrete and targeted steps towards the full realization of the rights of the Covenant. The ICESCR thus calls for the Government of Malawi to develop and adopt policies and legislation aimed at not only mainstreaming of such rights but also their progressive realization.

The Directorate of Economic, Social and Cultural Rights (DESCR) in the Commission is the epicenter and the driving force of all activities geared at promoting and protecting economic, social and cultural rights. The directorate undertakes a number of strategies to achieve the set strategic outcomes as outlined in the Commission’s Strategic Plan for the period (2011-2015). Such strategies include human rights awareness campaigns, human rights monitoring and research, investigation of cases, advocacy and lobbying among others. The subsequent subheadings provides details of some of the activities carried out by the Directorate in 2015.

6.1 Complaints Handling
The directorate was allocated one hundred an eight (108) cases in 2015. These complaints fell under the categories of labour, the right to education, the right to economic activity the right to culture and language, the right to property and the right to health, please refer to chapter 2. The following are some of the key highlights of cases that were handled by this Directorate:

6.1.1 Ms. Y –vs.- Lilongwe Private Schools
A complaint was received from Mrs. Y and in her complaint she stated that her son X was a student at Lilongwe Private School since May 2012 when the boy was in form 2. X has just passed his IGCSE examination in all 7 subjects in grades B and C. The complainant further alleged that the headmaster told her that X will not be allowed to continue with A levels at the school because of the boy’s unruly behavior. The complainant feels that the action by the school management is discriminatory because no action was taken on any indiscipline by her son.

The findings from the investigations revealed that there was no discrimination of any kind. However it was established that the complainant assumed that her son would not be admitted to continue his education at the school in view of the disciplinary issues that X was involved in. This led the complainant not to applying for readmission.
6.1.2 The Allegations of Torture of an Expectant Woman at Karonga District Hospital
The Commission learnt from the print media in the Sunday Times of 3rd May, 2015 entitled “Nurses torture expectant woman”. The article alleged that the victim was bleeding and was in acute pain. It also alleged that Mrs. Maduwe Mbisa of Karonga who was six months pregnant and in acute labour pains dragged herself to Karonga District Hospital where she expected to deliver a baby or at least receive medical attention. The article further alleged that Mrs. Maduwe Mbisa was told to go to a private clinic since the hospital did not have the scanning machine and that there was no ambulance to ferry her. The article further alleges that the nurse told her to take kabaza (bicycle taxi) to take her to the referral clinic.

Findings of the investigations revealed that Mrs. Maduwe Mbisa left Karonga District Hospital without the consent of the nurse who had earlier on diagnosed her and recommended that she should undergo scanning. It was further learnt that Karonga District Hospital did not have scanning machine at the time and as was the practice, the hospital used to refer such cases to a private clinic, namely Care. The district hospital organizes transport for its patients to Care clinic and that the clinic designated 14:00 hours for the services because it did not have a technician for the scanning machine before this arranged time. The Commission established that the matter was blown out of proportion. However, the Commission recommended to the Hospital that a functioning scanning machine should be made available as it is not sustainable to be relying on the private clinic for scanning the patients.

6.1.3 Complaint by Fabiano Khomba vs St. Thomas Technical College
Mr. Fabiano Khomba who hails from Ndathila Village, T/A Milang’ombe, Karonga lodged a complaint with the Commission in the course of the year 2015. He stated that he went to St. Thomas Technical College in 2009 to do a course in tailoring. It was a training course that could cover 4 years. He was informed by the college that upon completion, he would be given necessary materials for him to start his own tailoring business, but this did not happen when he completed his course. To his surprise, his classmates were employed by the college and when he asked college management, for a consideration that he too be employed as was the case with his classmates, no response was given. The complainant felt discriminated against.

Following investigations, it was found out that Mr. Fabiano Khomba did not come out with a tailoring certificate after completing his tailoring course. It was also established that the college does not have a policy of providing start-up equipment and materials to individual students who have completed their courses from the technical college but rather to groups. The complainant was properly advised following these findings.

6.1.4 Mr. Kafere Banda and others vs. New Lingadzi Farm Owners
A complaint was received from Mr. Kafere Banda on his own behalf and on behalf of concerned people from Mtsiliza location in Lilongwe. People have been cultivating on a piece of land belonging to Lingadzi Farm from 1989. This came after they had requested the owner of Lingadzi Farm if they could be using the part of the land which was idle and permission was granted for them to be cultivating on the land. When the Lingadzi farm owners sold the farm to Pacific Investment, the people were informed to harvest their farm produce by the end of 2014/15 growing season a development which did not go down well with the complainants.

Investigations into this matter revealed that Lingadzi Farm was once a property of Impala Farming and since that time the people had been using the land temporarily for agricultural activities and...
this followed an agreement which existed between Lingadzi Farm owners and the people. It was also revealed that Lingadzi Farm was then sold to Pacific Investment Ltd and based on an agreement which was reached, people were allocated a 300 acres of the land by new owner Pacific Investment Ltd to grow crops for 2014/15 growing season and then stop using the land after harvesting. Investigations also revealed that people were insisting in using the land. The mediation is still going on but about to be finalised. Development projects have started being done on the land under dispute by the new owners of the farm. It was established that no one is still continuing to farm on the said land.

6.1.5 Ms. Lindiwe Chikowi v. Mr. Richard Mkwapatira - Right to Labour.
The Complaint is that Mr. Richard Mkwapatira owes Ms. Lindiwe Chikowi K50,000 in unpaid salary for 8 months and that Zomba Magistrates Court passed a default judgment on the same in 2013 but to date Richard Mkwapatira is not abiding by the court judgement and that he is now “at large”. Ms. Lindiwe Chikowi worked as a Shop Assistant in Mkwapatira’s shop in Machinga until the shop closed down in 2012.

Investigations were conducted in Zomba and were finalized and the file is now awaiting closure. Zomba Magistrates Court is trying to find out the whereabouts of Mr. Richard Mkwapatira so that he pays the complainant the K50,000 compensation that he owes her.

6.1.6 Complaint by Stambridge S. Mgawi against Lilongwe District Forestry Office:
The Commission received a complaint from Stambridge Samson Mgawi who alleged that he bought firewood in Mitundu on 28th November, 2015. Upon reaching St. Johns Secondary school in Area 36, in Lilongwe the firewood was confiscated by Police and Forestry personnel. He was not happy with how the matter was handled because the firewood was being sold and had been told to pay K240,000.00 to have the vehicle he used released.

The Commission with reference to Sections 9, 10 and 11 of the Forestry Act that provide for seizure of forest products and articles, custody and disposal respectively, the Commission opined that the procedure that had been followed by Forestry staff contravened these provisions hence referred the complainant to the office of the Ombudsman. In the course of referring the case, the Lilongwe Forestry Office complied with the Commission’s recommendations and agreed with the observation that the complainant has suffered injustice in the process. The case was resolved. However, the Commission recommends that there is need for massive and comprehensive education in the area of environment and the way Department of Forestry and the Police are handling issues of this nature that there is great need to be applying human rights based approach in resolving issues of this nature.

6.1.7 Precious Phiri & Others vs Natural Resources College Management
In 2012, Natural Resources College hiked fees by 100% with a period of three weeks. This infuriated the students as there was no consultation with the students in order to get the side of the students’ views. This led to industrial action which later resulted into eleven student council leaders being dismissed and expelled from the college. The students sought the intervention of a private lawyer who applied and secured an injunction restraining the Management of Natural Resources College from dismissing the student council leaders. This injunction afforded the students an opportunity to write exams. The Management then managed to apply and secure a lift of the injunction. This enabled the Management to dismiss the student. Following this, the students’ results were withheld by the college administration. For three years disagreements arose between the students and the administration.
The Commission came in and managed to mediate and a resolve was secured and new Management of the College decided to release the results to the students. This was done and the students graduated in 2015. The case is in the process of being closed.

6.2 Human Rights Monitoring

In 2015, the Commission conducted a monitoring exercise to establish the existence of Human Rights-based HIV and AIDS workplace policies in the District, City and Municipal councils (Councils) and assess how such policies are being implemented. The specific objectives of the exercise were as follows:

(a) To establish whether District Councils have developed human rights-based HIV and AIDS workplace policies and how such policies are being implemented.
(b) To assess whether PLHIV experience stigma and discrimination in the work place and also in accessing HIV prevention, treatment and care services.
(c) To establish if District Councils provide any nutrition and other psychological support to PLHIV.
(d) To make appropriate recommendations to relevant bodies for improvement.

The Commission conducted interviews with the District AIDS Committees (DACs) and in some districts their representatives and those working in an acting capacity as DACs. The interviews were conducted using an interview guide. Further, the Commission conducted a series of Focus Group Discussions (FGDs) with some PLHIV who declared their HIV status at the work place.

The monitoring exercise established the following:

(a) That the National HIV and AIDS Policy (2012), offers specific guidance to the national HIV and AIDS response in Malawi. Additionally, in 2014, Malawi launched the 2015-2020 National HIV and AIDS Strategic Plan (NSP) to supersede the 2011-2016 which aims to translate the National HIV and AIDS Policy into action and provide a new framework for the implementation of HIV and AIDS interventions across various sectors. The monitoring exercise established that although it is a Malawi Government policy that 2% of ORT funding for public institutions or government departments such as District Councils should go towards HIV and AIDS related activities, the implementation of this policy direction largely depends on the commitment of the respective councils. It was established that there are variations in the way the councils comply with this policy direction. The general pattern is that the councils do not always allocate adequate funds for HIV and AIDS related activities from the 2% of their monthly funding.

(b) The general situation regarding the efficiency and effectiveness of HIV and AIDS work place policy is that currently the councils visited are implementing the HIV and AIDS interventions without a localized policy direction.

(c) That the councils have officers who declared their HIV status. It was further established that no strong mechanism exist to encourage other officers to declare their HIV status.

6.3 Education, Information and Training

In 2015, the Commission through the Directorate of Economic, Social and Cultural Rights (DESCR) led the process of developing the Human Rights Education Strategy. The Commission consulted its stakeholders in order to assess how human rights information is disseminated to the general public and suggest strategies for disseminating human rights information. Once the strategy is finalized, the strategy will assist in regularizing the dissemination of human rights in Malawi so that it becomes uniform and that all institutions and individuals dealing in the dissemination (education and training)
of human rights should be using the same content and methodologies.

6.4 Networking with Stakeholders

In 2015, the Commission has increased its corroboration and networking with Government departments, Ministries and Non State Actors (Civil Society Organisations) in a number of activities. The following are some of the networking initiatives that the Commission made:

6.4.1 Right to Food

The Commission has worked with CISANET, OXFAM, Action AID Malawi and CADECOM in studying two pieces of legislation (Bills) on the right to food, identified gaps and strengths in the two bills - these being and came up with one Bill. The study came up with a Policy Brief which has been published. Currently the Commission and its stakeholders is carrying out massive campaign throughout the country on the right to food so that the Food Security and Nutrition Bill is passed into law. It should be noted that Malawi has no law in the area of right to Food apart from section 30 (2) of the Constitution of the Republic of Malawi 1994.

In December, 2015, the Commission with its stakeholders, Right to Food Network, OXFAM and Landnet had two one hour long live radio programmes on MBC Radio I on the right to food and linking it to issues of land rights. These two programmes ignited a lot of interest and debate with the audience as they were seen to be touching on very vital elements of the right to food and issues to deal with land. The programme on the right to food campaign continues this year (2016) until the Bill on the Right to Food is passed into law.

6.4.2 Sexual and Reproductive Health Rights

The Commission produced the final report on the Public Inquiry it carried out in 2014 in December in Kasungu, Lojwa area, in the area of Chief Sultan Chow in Mangochi and in Rumphi in Mphompha. Following the launch of this report at Capital Hotel in Lilongwe, a National Dialogue on SRHR was conducted on 26th September 2016 and this culminated into the formation of the Task Force / Team that came up with a Plan of Action on the findings and recommendation of the Public Inquiry and National Accountability Assessment of Maternal Health in Malawi.

6.4.3 Business and Human Rights

The Commission in collaboration with Citizens for Justice, organised a one day training for the Commissioners and Staff of the Malawi Human Rights Commission and Ministry of Justice and Constitutional Affairs in June 2015. Following this training, a National Dialogue on Business and Human Rights and Business was organised in Lilongwe where a good number of stakeholders were drilled in issues to deal with business and human rights. Following this dialogue, a Task team was constituted and an Action Plan was also drawn. This will Action Plan will be rolled out in the course of the year 2016.

6.4.4 HIV and AIDS

The Commission in collaboration with Department of Nutrition, HIV and AIDS and National AIDS Commission lobbied the Women Caucus in November 2015 in Lilongwe to pass HIV and AIDS Prevention and Management Bill into law. Currently Malawi has no legislation in the area of HIV and AIDS. This initiative is using the SADC model law on HIV and AIDS and has come up with a Task team that is tirelessly working on the campaign to have this bill passed into law in the nearest future.

6.4.5 Hospital Reforms

The Commission is part of three technical task teams at the Ministry of Health tasked to discuss hospital reforms and come up with implementable recommendations. The reforms will include Hospital autonomy (where the Central Hospitals which are Referral centers, intend to be autonomous); Health Insurance (where insurance for services will be introduced) and finally Delinking Non-core
services from hospital management (delinking services like mortuary, kitchen and laundry from the Management of Hospitals so that those services are managed by private sector in Public – Private Partnership (PPPs) arrangement.

6.5 Economic, Social and Cultural Rights Thematic Committee
The Commission continues to have challenges in the functioning of the thematic committee on Economic, Social and Cultural Rights due to a number of reasons, for instance inadequate funding. However, in 2015, the Commission has reconstituted the composition of the Thematic Committee on ESCR and new membership has been sought. Terms of Reference for the running of the Committee were shared with the membership. In 2016 the Commission will endeavor to solicit fund for the operations of the thematic committee.

6.6 Lobbying for Signing and Ratification of Optional Protocol of the ICESCR
In 2015, the Commission through the Directorate of Economic, Social and Cultural Rights (DESCR) has carried out research on the importance of signing and ratifying the Optional Protocol of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The signing and ratifying of the Optional Protocols will assist in the resolve of complaints on Economic, Social and Cultural Rights at the International level where domestic solution has not been met and exhausted. The Commission came up with a position paper and will submit its findings in 2016 to the Government of Malawi through Ministries of Justice and Constitutional Affairs and Foreign Affairs to lobby for the signing and ratification of the OP-ICESCR.
MHRC Conducting a Public Inquiry on Sexual and Reproductive Health Rights in Kasungu.

A Training Workshop on Business and Human Rights
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. Section 24 of the Constitution makes provision for various human rights entitlements for women, including the right to full and equal protection by the 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 2015 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 2015. The cases were handled through investigations, mediation while others were referred to other appropriate institutions for redress. The following are some highlights of cases which the Commission, through the Directorate of Gender and Women Rights handled.

7.1.1 Ms. Nyirenda –vs- Mr. Theu

The Commission received a complaint from Ms. Nyirenda of Mzimba District alleging that she always suffers gender based violence at the hands of her husband; Mr. Theu. She stated that the respondent beats her and verbally abuses her in front of their children, more especially when he is drunk.

The respondent admitted to being an alcoholic during interviews conducted with the Commission. Despite interventions by Victim Support Unit both at Luwawa Police Unit and Mzimba Police Station when the complainant lodged her complaint, the abuse continued.

Following a failed alternative dispute resolution which was conducted to resolve the human rights abuses, the complainant though expectant insisted that she wanted a divorce and sought advice on instituting divorce proceedings. The complainant had instituted divorce proceedings at the time this report was being written.

7.1.2 Ms. Gondwe –VS- Mr. Luhanga

The Commission received a complaint from Ms. Gondwe alleging that Mr. Luhanga the respondent, who is her husband, left their matrimonial home in 2006 for another woman. She alleges that after marrying the other woman, he stopped supporting the complainant and the children. The respondent on the other hand indicated that he no longer wanted his wife but wanted the children to be in his
custody since he has the financial muscle to support them.

At the time of reporting the matter to the Commission, the complainant had already instituted divorce proceedings at the court. The Commission enlightened the complainant on how processes of the court proceedings hence the need to be patient and follow court rules. It is the wish of the complainant to her marriage. However the respondent seems to have made his mind to divorce the complainant.

7.1.3 Mrs. Mangwere vs Mr. Mangwere
The complainant was married to the respondent in 1992 and on 2nd December, 1993 they managed to buy a plot and build a house on it. As the complainant was a business woman, she contributed towards the building of that house by purchasing cement for the building of the foundation. They continued contributing towards the purchase of building materials until its completion. They also later managed to build a shop and another house.

In 2012, her husband instituted divorce proceedings against her, which resulted in a judgment where she was ordered not go back to their matrimonial home. However, no property was disposed of amongst the parties, which was the basis for the complainants’ complaint.

The complainant was advised to lodge an appeal to the High Court which the Commission assisted her with. She awaits a decision on the same.

7.1.5 Mrs. Jere vs. Mr. Jere
The complainant, Mrs. Jere lodged a complaint with the Commission against the respondent, her husband Mr. Jere for not providing financial support to her for a child they bore together. She alleged that since 2011, the respondent stopped communicating with her despite her constant reminders about the welfare of their child. She has lodged her complaint with a Victim Support Unit near her area of residence but has since not been assisted because she alleges that they do not assist her because her husband is also a police man.

The Commission made a recommendation to the complainant to institute divorce proceedings against the respondent. The matter was in court at the time this report was being written.

7.2 Education, Information and Training activities
Based on its objective of improving human rights knowledge in Malawi, the Commission 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.

7.2.1 Awareness meetings on the Gender Equality Act (GEA)
In 2015, the Commission with funding from UNFPA carried out awareness and sensitization meetings on the enforcement of the GEA, 2013. The objectives of the meeting were: to raise awareness on the GEA; to increase knowledge on the implementation of the Act and to raise awareness about the intended Gender Equality Act, 2013: Implementation and Monitoring Plan. The meetings were conducted as follows:

7.2.1.1 Awareness meetings for the Malawian Police Service (MPS)
In 2015, the Commission organized awareness meeting on the Gender Equality Act (GEA) for Police officers. Police Officers from the Prosecutions Department; the Victims Support Unit; and the Community Policing were targeted for these awareness meetings. A total of 260 officers
were sensitized in Mzuzu City, Chitipa, Rumphi, Nkhotaby, Dedza, Salima, Machinga, Balaka, Kasungu, Dowa, Ntchisi and Nkhotakota Districts.

GEA Awareness meeting with Police Officers from Dowa Police Station. The Officer in Charge at Dowa Police station seated centre is flanked on the right by MHRC Deputy Director for Gender and Women and on the left is Deputy Director for Education at MCTU.

The Commission briefed the participants on the contents of the Gender Equality Act of 2013 and their role in the enforcement of the Act. It is thus the Commissions intent that the Malawi Police Service will not only protect the citizens of Malawi but will also promote gender equality within their line of duty.

7.2.1.2 Awareness meetings on the Gender Equality Act, 2013 for Magistrate Courts.

The Commission, with funding from UNFPA, conducted similar awareness meetings with magistrates, court clerks, court marshals, prosecutors and court sheriffs in December, 2015 with the aim of orienting them on the provisions of the Act in order to facilitate access to justice within the formal justice system where gender equality is concerned. The meetings were held in Ntcheu, Ntchisi, Nkhotakota, and Kasungu districts. The meetings attracted 120 members of staff from the Magistrates Courts of which 30 were female and 90 males. The main objective of these meetings was to orient the court officials on the Gender Equality Act of 2013.
Since 2013, the Commission has trained a number of officials in magistrate courts from the Northern and Central regions on the GEA of 2013. The Commission will roll out a similar program in the Eastern region and some districts in the Southern Region in 2016.

7.2.1.3 Meetings with the District Executive Committees on the GEA, 2013.

The Commission has also been sensitizing other stakeholders such as District Executive Committee members on the Gender Equality Act, 2013 to ensure their planning and programming is gender mainstreamed. As a continuation of the series of meetings that started in 2013 targeting District Executive Committee Members (DEC), especially those dealing with issues of gender and women rights, the Commission in February, 2015 conducted gender awareness meetings with District Executive Committee members on the Gender Equality Act in Ntchisi, Kasungu, Nkhotakota, Mchinji, Ntcheu, Balaka, Neno, Chiradzulu, Thyolo and Mwanza district councils. A total of 49 female DEC members against 141 male DEC members were sensitized in all the afore-mentioned districts.

The GEA meetings held with the Police; Magistrates; and the Local Government came up with the following general recommendations:

(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; and,
(iv) The GEA should be translated into several languages such as Tumbuka, Lomwe, Yao and Chichewa so as to benefit a wider spectrum of the society.

7.2.2 Training Workshop on the Gender Equality Act, 2013 Manual.

The Commission in collaboration with stakeholders such as the Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW); Malawi Human Rights Resource Centre (MHRRC); Malawi Congress of Trade Union (MCTU); Malawi Police Service (MPS); NGO Gender Coordination Network (NGOGCN) and Media Council of Malawi developed a training manual on Gender Equality Act, 2013. The training manual was developed to allow for a coordinated approach in conducting awareness campaigns on the application and enforcement of the GEA.

The Commission, with financial support from UNFPA, organized a workshop to pretest the training manual on the Gender Equality Act targeting Community Based Organisations (CBOs) Leaders and Area Civic Education Coordinators (ACECs) from Dowa district. The training workshop was held at Chikho Hotel in Kasungu from 12th to 14th July, 2015. The workshop was facilitated by experts from Ministry of Gender, Malawi Human Rights Resource Centre, Malawi Congress of Trade Union, NGO – GCN, National Initiative for Civic Education (NICE).

7.2.3 Orientation and awareness workshop on gender related laws and Gender Equality Act for CBOs in Nkhotakota District.

The Commission, with financial support from UNWomen, organized a series of orientation meetings with Community Based Organisations (CBOs) on the same in Nkhotakota district from 16th to 20th November, 2015. The overall objective of the orientation workshops were to sensitise Community Based Organisation (CBOs) leaders and Area Civic Education Coordinators (ACECs) from Nkhotakota district on the Gender Equality Act 2013 and GRLs. Workshop recommendations were, among others, that CBOs should be assisted in accessing various laws in Malawi and CBOs need to be fully trained in issues of human rights and governance and that the Commission should organize complaints taking and investigation taking within the CBOs.

7.2.4 The Development of the Gender Equality Act, 2013 Implementation and Monitoring Plan.

The Commission together with the Ministry of Gender, Children, Disability and Social Welfare and other stakeholders in 2015, finally completed the drafting of the Gender Equality Act, 2013 Implementation and Monitoring Plan. 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. 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.

7.2.5 Validation Workshop on the Gender Equality Act, 2013 Implementation and Monitoring Plan.

The Commission, in collaboration with the Ministry of Gender, Children, Disability and Social Welfare organized a validation workshop on the Implementation and Monitoring Plan of the Gender Equality Act 2013 that was developed as explained in 7.4.8 of this report. The workshop was conducted on 28th July, 2015 in Lilongwe at Sunbird Lilongwe Hotel.

The validation workshop drew participants from Government Ministries; the National Assembly; Development partners; Civil Society Organizations; the Private Sector as well as the public sector.
The overall objective of the validation workshop was to provide a forum for stakeholders to critically analyze the Gender Equality Act 2013 Implementation and Monitoring Plan which is aimed at contributing to the attainment of Gender Equality in Malawi. Specifically, the workshop aimed at adopting the Implementation and Monitoring Plan for the period 2016 to 2020.
7.2.6 Message Development Workshop on the GEA, 2013.
The Commission organized a message development workshop on the Gender Equality Act. The workshop drew participants from Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW); Malawi Human Rights Resource Centre (MHRRC); Non-Governmental Organisations such as the Gender Coordination Network (NGO-GCN); National Initiative for Civic Education (NICE); Ministry of Information and Civic Education (MoICE); Interactive Civic Education Forum (ICEF), Malawi Police Service (MPS); and Malawi Congress of Trade Union (MCTU). The workshop was held at Chikho Hotel in Kasungu from 1st to 2nd October, 2015.

The overall objective of the workshop was to develop Information, Education and Communication (IEC) messages on the Gender Equality Act, 2013.

7.2.7 Sensitization Meetings in Balaka District
The Commission conducted open air sensitization meetings in Balaka District from 3rd to 5th June, 2015. Four sensitisation meetings in the area of Traditional Authority Chanthunya and T/A Nsamala in Balaka District were conducted. The open air meetings were aimed at educating communities on, and promoting awareness and respect for, human rights of all categories of people including women. The open meetings targeted traditional leaders, community leaders and all members of the community of Village Headmen Maitoni; V/H Kapalamula; V/H Chimpakati; and V/H Madyeratu in the District. 715 males and 1504 females were sensitized on human rights.

7.2.8 Sensitization Meetings in Dedza District
The Commission conducted open air sensitization meetings in Dedza District from 27th to 29th April, 2015. Three sensitisation meetings in the area of Traditional Authority Kachere in Dedza District were held. The open air meetings were aimed at educating communities on, and promoting awareness and respect for, human rights of all categories of people. In addition to this, the meetings were aimed at checking progress registered after the Public Inquiry on Maternal Health, which the Commission had conducted in the district in 2010. The meetings targeted traditional leaders, community leaders and all members of the community of Village Headmen, Msangu, Chipukuta, Chamadenga, Kunzuma and kanyimbi in the area of Traditional Authority Kachere in Dedza district.

7.2.9 Sensitization Meetings on the Gender Equality Act, 2013 and the Deceased Estates (Wills, Inheritance and Protection) Act.
The Commission sensitized 60 women on the application of the Gender Equality Act, 2013 and the Deceased Estates (Wills, Inheritance and Protection) Act in December, 2015. The sensitization was done in collaboration with the Daughters of Mary Immaculate (DMI) Sisters based at Kagwa Parish in Lilongwe.

7.3 Public Inquiry on Gender-based Violence in Nsanje district
In 2015, the Commission with funding from the European Union (EU) conducted a Public Inquiry on Access to Justice with reference to Gender Based Violence. The Public Inquiry was conducted at GVH Nthukuso in Traditional Authority Malemia in Nsanje district on 10th July, 2015. The inquiry was chaired by the Mzuzu High Court Judge, Justice Dingiswayo Madise who was also the Chairperson for similar inquiries in Mzimba in 2013 and Nkhotakota in 2014. During the inquiry witnesses gave testimonies on their experiences of gender based violence. The main objective of the public inquiry was to establish the responsiveness by duty bearers 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); Nsanje Magistrate Court, Nsanje District Health Office, Nsanje District Education office, NICE and Ministry of Gender through the Social Welfare Office. These stakeholders also shared their experiences and challenges as duty bearers in assisting victims of gender based violence.

The following are some of the emerging human rights issues from the inquiry:

(i)  **Weak enforcement of judicial orders and other forms of interventions from the justice system**

The Commission noted that though some witnesses could ably obtain a favourable order from the court regarding incidences of gender based violence, the actual enforcement of such orders against their perpetrators was very weak. One woman illustrated that the court had provided a protection order against her husband due to domestic violence and had also provided an order for maintenance for herself and her children. None of these orders proved to be effective as the husband did not comply with the said orders. The Nsanje Magistrate Court acknowledged that enforcement of judicial orders regarding maintenance and protection orders are weak due to lack of necessary resources to follow up.

(ii) **The cost of accessing justice– both informal and formal**

The Commission established from the testimonies provided by witnesses that access to justice, whether through the informal or formal justice system, necessitates monetary costs. For instance, testimonies from witnesses reveal that if one wanted to access bwalo la mfumu, they had to provide K1000 to the chief. Similarly, for one to initiate court proceedings at the Magistrate’s Court, the complainant has to pay a processing fee of K500. The Magistrate Court however confirmed that K500 is required as a processing fee for the initiation of any court proceeding which is essential towards facilitating paper work and other administrative tasks in relation to the case.

(iii) **Police Bail**

It was also established that police bail is free. The community however indicated that some police officers demands money for service such as police bail. In a bid to address this, the community was advised to approach senior officers directly with their complaints if they suspect that junior officers are attempting bribes. Incidences of bribery and corruption should also be reported to the Malawi Human Rights Commission located in Blantyre and Lilongwe.

(iv) **The Prevalence of Patriarchy**

The Commission established during the public inquiry that power relations at the household level predominantly favour the husband. Thus, in the event of gender based violence within the household, the Commission learned that women often lack the courage to report these incidences to relevant authorities. There is a tendency of women who are victims of gender based violence withdrawing the case from the police especially in instances where the husband is both perpetrator and sole breadwinner. The Commission learned that mothers have shielded their husbands from prosecution even in cases where the husband is accused of defiling their own daughters.

(iv) **Polygamous marriages.**

The public inquiry also revealed that polygamous marriages are prevalent in Nsanje. The Commission
heard testimony from a twenty year old woman married to a middle aged man who also has three other wives. The Commission learned that this woman had married the man whilst she was under eighteen years of age (due to poverty in her village) and she currently has two children with him. The challenges of a polygamous marriage include being at a heightened risk of contracting HIV as well as receiving less care and support from the husband.

(v) **Weak coordination and corroboration amongst justice actors**

Coordination and corroboration amongst the various justice actors (whether formal or informal) is not always effective. The Commission heard testimony from various witnesses who indicated that when reporting incidences of gender based violence to the police, they are often referred back to the traditional authority to pursue mediation. In other cases, the police also request that they produce a letter from their traditional authority signifying that they have exhausted alternative dispute resolution including mediation and subsequently reconciliation. Witnesses also illustrated that when they approach the police before utilizing the avenue of their traditional authority, the traditional authority accuse them of undermining his authority.

(vi) **One Stop Centre**

Officials from the health department took advantage of the public inquiry to also sensitise the audience on the existence of the One Stop Centre which ensures that victims of sexual assault receive the necessary medical intervention and police documentation in one place as opposed to constant referrals from one agency to another. In the wake of recent rises in cases of defilement, health authorities illustrated that PEP and emergency contraceptives are always administered to the victims as a precautionary measure. Medication to minimise the risk of Sexually Transmitted Infections is also provided as well as psychological counselling.

(vii) **Timely access to justice**

Though resolution of gender based violence cases in the informal justice system is relatively faster, the process is more prolonged within the formal justice system. The witness who provided testimony on the defilement of his daughter by a teacher illustrated that the matter had been initiated at the Magistrates Court from 2013 to-date. There is still no resolution on the matter. WOLREC collaborated this finding and that WOLREC often provides legal assistance to victims of gender based violence.

(viii) **Limited awareness of human rights**

The Commission established from the audience during the public inquiry that most people in rural communities do not understand their rights, let alone their corresponding responsibilities. Thus, incidences of property grabbing continue to be prevalent and in many instances, tolerated. The victims are mostly women.

(ix) **Child marriages**

Child marriage is also an issue of concern with a significant number of parents allowing their children (particularly the girl child) to be married in exchange for lobola. Though laws are in place to curb the practise of property grabbing and forced marriages, they are rarely implemented. The Magistrate of the Nsanje Magistrate Court also illustrated that the newly enacted laws such as the Gender Equality Act (GEA) 2013 and the Deceased Estates (Wills, Inheritance and Protection) Act have not
been widely disseminated within the community. Thus, both rights holders and duty bearers rarely use these laws as points of references.

(x) **High rate of school drop outs.**

The public inquiry revealed that children are kept out of school by parents and that the girl child is more likely to be withdrawn from school especially during her later years of primary school. In spite of the enactment of the education act that makes primary education compulsory for all, the girl child is often married off based on unsubstantiated hopes of alleviating poverty within the family.

(xi) **Re-victimisation of the victim during trial**

The public inquiry also revealed that survivors and victims of gender based violence are sometimes re-victimised during the trial process in the formal justice system, especially in instances of rape and other forms of sexual assault. Some women are asked to narrate their experiences explicitly in an open court resulting in their re-living the assault they suffered.

The public inquiry recommended to Government, MHRC and stakeholders the following:

(a) In a bid to ensure timely access to justice, government must put in place plans to increase the number of courts in rural communities to ease access to justice for people in rural communities.
(b) Government must publish and disseminate acts of parliament that focus on gender equality to government institutions as well as community leaders.
(c) The Judiciary must prioritize and fast track cases involving gender based violence especially for women in rural settings.
(d) The Judiciary must recognize women’s non-financial contribution to the matrimonial home when distributing matrimonial property upon dissolution of a marriage.
(e) The Judiciary and the police must actively act upon judicial orders that are not being implemented by perpetrators of gender based violence.
(f) Law enforcement agencies must refrain from initiating mediatory remedies where victims of gender based violence require prosecutorial action and other effective remedies.
(g) Government must increase shelters and places of safety for victims and survivors of gender based violence in rural areas.
(h) Government must put into place a comprehensive program that focuses on effective rehabilitation of perpetrators of gender based violence whilst in lawful detention for their possible re-integration into society.
(i) Non-Governmental Organizations must ensure a coordinated approach in carrying out human rights sensitizations with an enhanced focus on gender based violence.
(j) NGOs must engage with traditional leaders during awareness raising programs in order to ensure attendance of communities to such events.
(k) More engagement with men as partners should be utilized in sensitization meetings regarding gender based violence.
(l) MHRC should conduct follow up meetings with stakeholders and duty bearers on concerns raised during the public inquiry and how the same have been addressed.
(m) MHRC should actively engage government to recognize and address the peculiar needs of rural communities in accessing justice especially in cases of gender based violence.
(n) MHRC should undertake an in-depth study on polygamous marriages and the rights of women to act as a point of reference towards informing policy and legislative reform on family and marriage relations.
The Commission intends to disseminate a report to stakeholders and the general public on the three inquiries that were conducted in Mzimba, Nkhotakota and Nsanje districts in 2016.

### 7.4 Human Rights Monitoring and Research

The Commission has been given the mandate to ensure enforcement of the provisions of the Gender Equality Act of 2013 under Section 8 and also under Section 9 (2) (a), to monitor and evaluate policies and procedures of Government agencies, bodies and the public service and private service in order to promote gender equality. The Commission conducted monitoring visits at Dedza Police, Dedza Magistrate Court, Dedza Social Welfare Office, Salima Police, Salima Magistrate Court, Salima Social Welfare Office and Ngonya Community Based Organisation in Dowa District in March, 2015 to assess their compliance with the provisions of the Act, especially since the above mentioned institutions had already been trained on the application of the Act.

The visits established that little was being done to implement the provisions of the GEA by most stakeholders either due to lack of self-initiative; ignorance; or lack of rules and regulations to guide them. The Commission intends to continue such exercises in order to assess progress on the enforcement of the Act and to also impress upon duty bearers their roles in ensuring the enforcement of the same.

### 7.5 Networking and collaboration

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 24th to 26th November, 2015 in Lilongwe and was organized by UN Women. 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.

#### 7.5.2 The Defence of Malawi’s 7th State Party Report on the CEDAW

Malawi ratified the CEDAW in September, 1987. The initial Report on the CEDAW was submitted in 1988, after which the next Report was submitted as the Combined Second, Third, Fourth and Fifth State Report in 2006. The Sixth State Report was prepared and submitted in 2008. On 6th November, 2015, Malawi defended her 7th State Report before the Committee on the CEDAW in Geneva, Switzerland. The Commission produced an Alternate Report on CEDAW in 2015 and was represented in Geneva by the Principal Gender and Women Rights Officer.

The Committee made Concluding Observations from Malawi’s defense of her 7th CEDAW State Party ranging from recommendations to review laws on citizenship, marital rape, age of marriage etc. Amongst a number of other observations, the Committee also made recommendations on the need to reduce maternal mortality, high school drop-out rates, the effective use of traditional courts in improving access to justice, to improve measures to protect albinos, to improve access to property for women.
7.5.3 **The Southern Africa Regional Gender and Peace building Workshop**

The Centre for Conflict Resolution (CCR) hosted a three day gender and peacebuilding workshop for civil society organisations and key institutions working on human rights, security and peace building in Malawi, South Africa, Swaziland and Zambia. The workshop which took place from 26th – 28th October, 2015 attracted 25 participants from Malawi, Swaziland, Zambia, and the Republic of South Africa of which 17 were female and 8 male. The Commission was represented by the Gender and Women Rights Officer.

The main purpose of the workshop was to increase capacities of human rights institutions and civil society groups to respond effectively to human rights violations, promote gender equality, and build social cohesion.

7.5.4 **Regional Training Workshop for African National Human Rights Institutions**

The Commission attended a regional training workshop organized by Raoul Wallenberg Institute (RWI) and the African Network of National Human Rights Institutions (NANHRI). The aim of the training was to introduce fundamental human rights concepts, examine international and regional instruments and mechanisms of human rights, as well as core functions, main features and methods of operation of national human rights institutions. The training workshop was held at Boma Hotel Nairobi in Kenya from Monday 23rd to Friday 27th November, 2015.

The Commission was represented by Gender and Women Rights Officer and the IT Officer.

7.5.5 **Working session for the Commonwealth Forum of National Human Rights Institutions (CFNHRI) on Early and Forced Marriages.**

The Commission attended a Commonwealth Working Session for the Commonwealth Forum of National Human Rights Institutions (CFNHRI) on Early and Forced Marriages in May, 2015 in Kigali, Rwanda. Commissioner Nkoka and Deputy Director for Gender and Women Rights represented the Commission at the working session. The Working session adopted a new Declaration – the Kigali Declaration – to prevent and end early and forced child marriages in delegates’ respective countries. Participants of the working session acknowledged that child, early and forced marriages presents a serious and persistent violation of the rights of young women and girls and causes irreparable damage to victims and society as a whole.

The working session resolved that member countries should popularize the Kigali Declaration in their respective countries as one way of eradicating early and forced child marriages in the Commonwealth.

7.5.6 **Child Marriages Dialogues.**

The Commission attended a Commonwealth Secretariat Child Marriages Dialogue held in Nairobi, Kenya from 24th to 25th June, 2015. Commissioner Nkoka and Deputy Director for Gender and Women Rights represented MHRC at the dialogue. This was a continuation of the Working session that was held in Kigali, Rwanda on Early and forced child marriages. During the workshop Malawi Human Rights Commission was among the three NHRIs that presented a paper and also facilitated the dialogue session.
Chapter Eight:

CORPORATE SERVICES

8.1 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.

8.2 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 2015 planned activities and provided a platform to discuss the status of the Human Rights situation in the country. In 2015, 3 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.

The table 4 below summarizes the Commission’s meetings both local and international on human rights issues:

TABLE 4: TABLE SHOWING LOCAL AND INTERNATIONAL HUMAN RIGHTS MEETINGS IN 2015

<table>
<thead>
<tr>
<th>Name(s)</th>
<th>Title of Meeting</th>
<th>Date</th>
<th>Venue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioner Steven Nkoka</td>
<td>Capacity Building Programme for Commonwealth Forum for National Human Rights Institutions Members on Early and Forced Marriage and Sexual Violence in Conflict</td>
<td>4 – 8 May, 2015</td>
<td>Kigali, Rwanda</td>
</tr>
<tr>
<td>Commissioner Amb. Sophie Kalinde</td>
<td>A Special Event with National Human Rights Institutions</td>
<td>3 - 4 June, 2015</td>
<td>Brussels, Belgium</td>
</tr>
</tbody>
</table>
The Commissioners had an audience with the State President in keeping with the provisions of the Human Rights Commission Act which among other responsibilities obligates the Commissioners to keep the President fully informed of the activities of the Commission and to furnish the President with advice and recommendations on human rights issues. The meeting with His Excellency President Professor Arthur Peter Mutharika was held on 4th July, 2015 at the Kamuzu Palace in Lilongwe.

8.3 Appointment of Sixth Cohort of Commissioners
The term of fifth cohort of Commissioners expired in July, 2015 and the process to recruit the sixth cohort of Commissioners commenced in May, 2015 with the flagging of an advert requesting human rights organisation to make their nominations. The orientation of nominees took place in May, 2016 and the State President appointed the new members on 17th August, 2016. The sixth cohort of Commissioners was sworn in on 12th November, 2015 and the members were: Mr. Justin Dzonzi, Chairperson; Mr. Baldwin Chiyamwaka, Commissioner; Mr. Benedicto Kondowe, Commissioner; Mr. Dalitso Kingsley Gabriel Kubalasa, Commissioner; Mr. Steven Nkoka, Commissioner; Mrs. Bertha Sefu, Commissioner; and Reverend Patrick Semphere, Commissioner. The Commissioners’ term would run for three years.
8.4 Commissioners Participation at UN forums

8.5 Review of the MHRC Accreditation 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 enjoys the illegibility of 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 ‘A’ Status is periodically reviewed. The review process for Malawi continued in 2015 and was also differed to March 2016 for the fourth timed.

8.6 Development of National Human Rights Action Plan for 2016 - 2020
The previous National Human Action Plan for the Promotion and Protection of Human Rights in Malawi (NAP) expired in 2011. The Commission commenced the process of replacing the NAP through the development of the Concept Note and the establishment of Steering and Technical Committee. The membership of both Committees was drawn from Government, Independent bodies and Civil Society Organization that deals with human rights. In 2015, the Commission held an engagement meeting with media personnel with the aim of ensuring adequate profiling of the NAP development process.

The consultants, namely, Mr. David Johnson and Justice Professor Redson Kapindu were engaged to facilitate the process, and produced an Analytical Issues Paper that formed the basis for the of NAP drafting process. The Contact Group comprising representation from Ministry of Justice and Constitutional Affairs, the Commission and United Nations (Malawi Office) was constituted to provide expertise support to NAP development process. Several meetings with key stakeholders, Technical Committee and Steering Committee were also conducted to ensure that all stakeholders understood the NAP development process and that they were fully consulted. In November 2015 the draft NAP had been finalised and comments from a cross section of Malawians including the Steering committee were being worked on. In December 2015, the Steering Committee adopted the draft 2016 – 2020 NAP and was submitted to Ministry of Justice to seek Cabinet approval before launching, dissemination and implementation.

8.7 Development of a New Strategic Plan for Malawi Human Rights Commission
The Commission’s Strategic Plan for 2011 – 2015 expired in December, 2015 and the Commission started the process for reviewing the Plan with the aim of developing the New Strategic Plan for the Commission. During the year, the Commissioners and Staff conducted the preliminary review of the old Strategic Plan and identified some of the issues to be included in the new Strategic Plan.

The Taskforces comprising of Commissioner Baldwin Chiyamwaka and Commissioner Stephen Nkoka was formed to lead the process. The Task Force developed a Conceptual Frame Work and
the Road Map that were intended to guide the process of developing new Strategic Plan. Malawi Institute of Management (MIM) was engaged as Consultant to facilitate the process through conducting situational analysis and drafting of the Strategic Plan. The Strategic Plan was expected to be finalized in the first quarter of 2016.

8.8 Human Resources Management

8.8.1 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 7 below:

TABLE 5: TABLE SHOWING PERSONNEL RECRUITED IN 2015

<table>
<thead>
<tr>
<th>No</th>
<th>Post</th>
<th>Number of Positions</th>
<th>Directorate</th>
<th>Name of the Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Under Secretary</td>
<td>1</td>
<td>Corporate Services</td>
<td>Ronald Mateyu</td>
</tr>
<tr>
<td>2</td>
<td>Child Rights Officer</td>
<td>1</td>
<td>Child Rights</td>
<td>Michael Mperembe</td>
</tr>
<tr>
<td>3</td>
<td>Civil and Political Rights Officer</td>
<td>1</td>
<td>Civil and Political Rights</td>
<td>Chance Kololokesya</td>
</tr>
</tbody>
</table>

8.8.2 Staff Resignations
In 2015, the Commission had three officers leaving through resignation. Mrs Julieth Sibale Principal Economic Social and Cultural Rights Officer, Mrs Sabina Mmanga, Assistant Technology Officer, Mr Stuart Mvula, Economic Social and Cultural Rights Officer resigned from their positions.

8.8.3 Capacity Development

8.8.3.1 Short Term Training
The policy of the Commission is to make sure that capacity of staff is continuously developed through training. A number of officers were sent on short term training courses and workshops on human rights as detailed in the Table 8 below:
TABLE 6: TABLE INDICATING SHORT TERM TRAINING AND OFFICERS

<table>
<thead>
<tr>
<th>Name of Officer</th>
<th>Position</th>
<th>Title and Dates</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Michael Kakatera</td>
<td>Acting Director of Gender and Women’s’ Rights</td>
<td>Commonwealth forum of NHRI early and forced marriages, in May, 2015, Rwanda</td>
<td>Kigali, Rwanda</td>
</tr>
<tr>
<td>Mr. Michael Kakatera</td>
<td>Acting Director of Gender and Women’s’ Rights</td>
<td>Child marriages dialogue, from 24th to 25th June, 2015</td>
<td>Nairobi, Kenya</td>
</tr>
<tr>
<td>Mrs. Chifundo Njolomole</td>
<td>Civil and Political Rights Officer</td>
<td>Reducing over use of pre-trial detention, May, 2015</td>
<td>Kigali, Rwanda</td>
</tr>
<tr>
<td>Ms Priscila Banyani</td>
<td>Accountant</td>
<td>ESAAG Conference, 8th to 13th March, 2015</td>
<td>Dares Salam, Tanzania</td>
</tr>
<tr>
<td>Mr. Harry Migochi</td>
<td>Director of Economic Social and Cultural Rights</td>
<td>Business and Human Rights, from 28th to 30th September, 2015</td>
<td>Johannesburg, South Africa</td>
</tr>
<tr>
<td>Mr. Aaron Tawakali</td>
<td>Economic Social and Cultural Rights</td>
<td>Conflict Management, from 8th to 10th December, 2015;</td>
<td>Johannesburg, South Africa</td>
</tr>
<tr>
<td>Mr. Zondwayo Nhlema</td>
<td>Disability and Elderly Rights Officer – Regional Office</td>
<td>Conflict Management, from 8th to 10th December, 2015;</td>
<td>Johannesburg, South Africa</td>
</tr>
<tr>
<td>Mr. Chancy Kalolokesya</td>
<td>Civil and Political Rights Officer</td>
<td>Conflict Management, from 8th to 10th December, 2015;</td>
<td>Johannesburg, South Africa</td>
</tr>
<tr>
<td>Ms. Grace Kalowa</td>
<td>Gender and Women's Rights Officer</td>
<td>Introduction for human rights, 22nd to 26th May, 2015</td>
<td>Nairobi, Kenya</td>
</tr>
<tr>
<td>Mr. Victor Khwima</td>
<td>Gender and Women’s Rights Officer</td>
<td>Gender and peace building, 26th to 28th October, 2015</td>
<td>Bambane, Swaziland</td>
</tr>
<tr>
<td>Mr. Grace Jere Mawali</td>
<td>Principal Gender and Women’s Rights Officer</td>
<td>Attended the defense of Malawi’s 7th state report on the CEDAW.</td>
<td>Geneva, Switzerland</td>
</tr>
</tbody>
</table>

8.8.3.2 Long Term Training
During the year, 2 officers were offered scholarships to study Masters’ degree programmes as per Table 9 below:
8.9 The 2015 International Human Rights Commemoration Day

Malawi joined the world in commemorating 2015 International Human Rights Day on 10th December, 2015. The theme was “Our Rights. Our Freedom. Always” that was devoted to the launch of a year-long campaign for the 50th anniversary of the two International Covenants on Human Rights: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, The two covenants were adopted by the United Nations General Assembly on 16 December 1966 and Malawi ratified them on 22nd December 1993.

The Commission in collaboration with stakeholders lined up a number of activities to mark the human rights day commemoration including sensitisation meetings, panel discussion, presidential address to the nation on the eve of the 10th December, press releases, and solidarity march on the 10th December. The main activity was held on 10th December, 2014 at the Masinha Ground and the State President of the Republic, His Excellency Professor Peter Arthur Mutharika was the Guest of Honour.
PICTORIAL FOCUS OF THE 2015 INTERNATIONAL HUMAN RIGHTS DAY COMMEMORATION

1. His Excellency the State President Prof. Arthur Peter Mutharika Arrives at Masintha Ground in Lilongwe.
2. Speaker of the National Assembly, Chairperson of MHRC and the Executive Secretary of MHRC Welcoming the President.
3. Solidarity March led by the Malawi Police Band.
4. Welcoming Gesture to the President by a Young Boy and Girl.
5. School Children Joining the Commemoration Demanding their Right to Education.
6. The First Lady Madame Gertrude Mutharika speaking to some Officials.
7. Part of the Solidarity March.
8.10 Library Services
One of the core duties of the Commission is to act as a source of human rights information for the Government and the people of Malawi; to assist in educating the public on, and promoting awareness and respect for, human rights as well as to promote more particularly the human rights of vulnerable groups, such as children, illiterate persons, persons with disabilities and the elderly. The Commission's Library and Information Resource Centre exists to support this function.

The Library and Information Resource Centre continued to provide information services in the year 2015 to its members of staff, stakeholders and the general public. Some of the services provided were in form of current awareness on a number of developmental issues, reading, reference and referral as well as information resources collection.

In order to ensure that members of the general public are being kept abreast with current socio-economic and political information, the library continued subscribing to daily newspapers. Furthermore the library also ensured availability of drafted bills to be tabled in Parliament. The library acquired audio visual materials such as TV screen and associated equipment.

The library section also continued with its role of raising the image of the Commission through mounting and commentating of display pavilions in various events, for instance, the library led in the conceptual and implementation of the 2015 International Human Rights Day commemoration displays which was held at the Masintha Ground.

8.11 Procurement Services
The Commission, like all public institutions, established 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: procurement of goods, works and services, major ones being two project vehicles, items for human rights day commemoration and office security services; production and submission of quarterly reports to the ODPP as required by the Procurement Act; projects procurement plans; coordinating internal procurement committee activities, including production of minutes and reports; and administering contracts for the supply of goods and services to the Commission.

8.12 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 2015 this section undertook the following activities:

8.12.1 Updated an Interactive Website
The Commission maintained an interactive website with the intention of giving viewers a platform to interact freely, share views, give opinion etc.

The website is running at www.hrcmalawi.org and is being hosted by Globe Internet Limited. The
Commission also on the social media and its face book page is https://www.facebook.com/HumanRightsCommissionofMalawi

8.12.2 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 included the installation of both wired and wireless Local Area Network and Internet.

8.13 Public Relations
The Commission intensified its communication with the general public in the year 2015. 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 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:

8.14 Challenges
The following were the challenges experienced during the year:
8.14.1 Shortage of office space
The Commission continued to face challenges in office space both at headquarters and regional offices. There are sixty-eight officers against thirty-four office rooms. This has resulted into sharing of offices by senior members of staff and brings un-comfortability to the complainants, in some cases.

8.14.2 Inadequate funding
Inadequate annual funding from Government affected the operation and implementation of the activities of the Commission in such that some activities were not fully carried out. This negatively affected the implementation of the delivery of service of the Commission to fulfil its mandate. The unpredictability of donor funds and donors' areas of focus have made the Commission to receive low funding from the donors.

8.14.3 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 accessibility of the Commission's services in the Northern Region.

8.14.4 Shortage of Equipment and Furniture
Some officers do not have office furniture and appropriate equipment to effectively discharge their duties.

8.14.5 Shortage of staff and inadequate trained personnel
The Commission was also challenged with the shortage of staff particularly in core departments posed challenges on the output and delivery of human rights work. This led to delays in resolving reported cases of violations of human rights. Also 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.

8.15 Financial Management
The Commission receives recurrent funding from the Government in form of Personal Emoluments and Other Recurrent Transactions (ORT). In 2014/15, the approved budget for Personal Emoluments was K345,844,236. It is noteworthy that the same staffing levels had K307,748,050 as approved budget in the 2015/2016 financial year. In terms of Other Recurrent Transaction (ORT), which is used for operations, was reduced to K101,000,000 in 2015/2016 financial year from K119,919,775 in 2014/2015 financial year.
TABLE 8: SHOWS FINANCIAL ASSISTANCE FOR THE COMMISSION FROM BOTH GOVERNMENT AND OTHER PARTNERS

<table>
<thead>
<tr>
<th>Source of Funding in 2015 Year</th>
<th>Amount of Receipts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MALAWI GOVERNMENT</strong></td>
<td></td>
</tr>
<tr>
<td>Personal Emoluments and Benefits</td>
<td>311,712,300.13</td>
</tr>
<tr>
<td>Other Recurrent Transaction (ORT)</td>
<td>71,254,463.93</td>
</tr>
<tr>
<td><strong>GRANTS/ASSISTANCE</strong></td>
<td></td>
</tr>
<tr>
<td><strong>UNDP</strong></td>
<td></td>
</tr>
<tr>
<td>Malawi Human Rights Support Project</td>
<td>109,855,794.10</td>
</tr>
<tr>
<td><strong>EU DEMOCRATIC GOVERNANCE PROGRAMME</strong></td>
<td></td>
</tr>
<tr>
<td>1.3.3.2- Undertake human rights situation monitoring visits to prisons and places of detention</td>
<td>2,998,400.00</td>
</tr>
<tr>
<td>1.4.5.1 Conduct Public inquiry on Gender Based violence in selected districts in Malawi -Nsanje</td>
<td>7,939,183.00</td>
</tr>
<tr>
<td>2.1.2.1 Thematic discussion sessions on Human Rights based approaches with key stakeholders - Disability Act 2012, UNCRPD and the National disability policy</td>
<td>6,072,198.00</td>
</tr>
<tr>
<td>2.1.2.2 Commemoration of 2015 International Human Rights Day.</td>
<td>11,101,864.00</td>
</tr>
<tr>
<td>2.1.2.3 Dissemination of the UN’s concluding observations on the human rights instruments ratified by Malawi.</td>
<td>3,864,500.00</td>
</tr>
<tr>
<td>2.1.3.1 Monitor the compliance on various legislation in selected districts in Malawi - Human rights adherence in elderly homes</td>
<td>1,060,900.00</td>
</tr>
<tr>
<td>2.1.4.1 Conduct on-the-spot investigations, alternative dispute resolution on cases of complaints of human rights violations in targeted districts</td>
<td>2,259,300.00</td>
</tr>
<tr>
<td><strong>NATIONAL AIDS COMMISSION</strong></td>
<td></td>
</tr>
<tr>
<td>HIV and AIDS mainstreaming</td>
<td>15,143,856.75</td>
</tr>
<tr>
<td><strong>UNICEF</strong></td>
<td></td>
</tr>
<tr>
<td>Child protection activities</td>
<td>25,010,800.00</td>
</tr>
<tr>
<td><strong>SAVE THE CHILDREN INTERNATIONAL</strong></td>
<td></td>
</tr>
<tr>
<td>Quality Learning and Accountability Project – Child Rights Governance</td>
<td>8,095,540.00</td>
</tr>
<tr>
<td><strong>TILITONSE FUNDS</strong></td>
<td></td>
</tr>
<tr>
<td>Kafantayeni Death Sentence Rehearing Project</td>
<td>114,005,876.19</td>
</tr>
<tr>
<td><strong>UN WOMEN</strong></td>
<td></td>
</tr>
<tr>
<td>Scaling up Women’s Rights realisation and Gender equality attainment</td>
<td>3,150,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>693,524,976.10</td>
</tr>
</tbody>
</table>

**NOTE:**

- Personal Emoluments and Other Recurrent Transactions receipts and expenditures for 2015 reflects two half financial years' transactions of 2014/2015 and 2015/2015 financial years of the Malawi Government.
Chapter Nine:

CONCLUSION

In conclusion, the 2015 Annual Report of the Commission covers the activities that the Commission undertook in the period January to December 2015. These activities were implemented in line with the Commission’s broad mandate of promoting and protecting human rights and investigating violations of human rights.

The year 2015 proved to be a very successful year for the Commission. The Commission undertook a substantial amount of work in the area of complaints handling. A total of 262 complaints were registered demonstrating a 26.8% decrease from the 358 complaints that were registered in 2014. This trend has been observed for sometime now since 2006. 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. The commission notes that there is need for change in approach and network with those human rights institutions that have a comparative advantage that the hard to reach communities are reached.

It is important to note that in 2015, 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 2014 and 2013. It is also worth noting that for the last three years, Economic, Social and Cultural rights cases have significantly increased, an indication of a paradigm shift from CPR to ESCR. This could be attributed to the fact that the Malawian population has begun to understand that availability of social and economic services have a direct bearing on their rights.

Furthermore, the Commission continued to carry out several activities in the area of civil and political rights, including, continuation of the 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.

The process started in earnest in February, 2015. At the close of the year 90 death row inmates had been taken to Court for resentencing hearings. In March 2015, the Commission organized a colloquium for judges of the Supreme Court and High Court of Malawi on the Role of Mental Health Evaluations in Capital Sentencing. The colloquium was aimed at building capacity of participants to identifying and adjudicating upon relevant factors to the circumstances of the offence and the characteristics of the offender which show why the death penalty should be mitigated, particularly the mental health status of those entitled to be sentenced, both at the time of the offence and the time of sentencing. This colloquium followed a successful training for lawyers, paralegals, mental health practitioners and 5 judges on Mental Health Evaluations and Capital Sentencing which was held in January 2015 in Zomba.

The Commission also contributed to various state party reporting programmes, including compiling and submitting a report the United Nations Universal Periodic Review (UPR) of Malawi. The UPR
The Commission effectively carried out various human rights education, advocacy, and monitoring and research activities. These activities were aimed at ensuring that the Commission’s visibility is enhanced at the same time influencing and shaping policy reforms and public discourse on human rights. Some of the activities include an expert conference on death penalty; Child Trafficking Campaigns in Schools; Advocacy on Child Friendly Legislation; Advocacy on the Enactment of Adoption of Children Bill (Amendment); Advocacy on the Enactment and Gazette of the Trafficking in Persons Act, 2015; monitoring the implementation of Disability Act (2012), monitoring compliance with international standards on management of elderly homes; training and development of monitoring tools for UNCRPD and thematic discussion on Human Rights Based Approaches with District Directors Planning (DDP) and District Social Welfare Officers (DSWOs) on Disability Rights.

The Commission finalized the nation-wide Public Inquiry on Access to Justice with reference to Gender Based Violence and finalized a report on a public inquiry on the Status of the Enjoyment of Sexual and Reproductive Health and Rights in Malawi. Public Inquiries are carried out as a means of addressing systemic human rights violations, in order to among other things, unearth and address the structural causes for such violations.

Lastly but not least the Commission carried out a number of activities in the area 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. Within this section, the report covers two strategic activities which took most of the Commission’s time in 2015. The Commission commenced the process of developing a new National Human Rights Action Plan (NAP) replacing the one that expired in 2011 through the development of the Concept Note and the establishment of Steering and Technical Committee.

The membership of both Committees was drawn from Government, Independent bodies and Civil Society Organization that deals with human rights. In December 2015, the Steering Committee adopted the draft 2016 – 2020 NAP and was submitted to Ministry of Justice to seek Cabinet approval before launching, dissemination and implementation. In the same year, the Commission initiated the process for reviewing its 2011 – 2015 Strategic Plan. During the year, the Commissioners and Staff conducted some preliminary review of the old Strategic Plan and identified some of the issues to be included in the new Strategic Plan. The new Strategic Plan is expected to be finalized in the first half of 2016.

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, 2015 was an outstanding year for the Commission. Considerable progress was recorded in the discharge of the Commission’s mandate, with emphasis on addressing the human rights of vulnerable groups.