



AN INVESTIGATION

INTO THE SHOOTING AND DEATH OF CHIKONDI

MAKAWA AT THE GATEWAY MALL IN LILONGWE

December 2022

EXECUTIVE SUMMARY

1.0 Background

On Tuesday 9th August, 2022 the Malawi Human Rights Commission (hereinafter referred to as “the Commission”) received a complaint from Mphatso Makawa (herein referred as a complainant). Mphatso Makawa alleged that his brother Chikondi Makawa (herein referred as a deceased) was shot dead by a police officer at Acres Bar at the Gateway Mall in Lilongwe on 7th August 2022. He said that the deceased was the lastborn in their family and unmarried. The deceased was staying with his mother at Area 49 Gulliver. He further stated that the deceased had a mental problem known as bipolar disorder which was diagnosed in 2020 and had been taking medication.

The complainant stated that on 7th August 2022, he went to visit his mother in Area 49. He found his cousin who stayed with his mother who told him that the deceased was back from Zomba where he went for a funeral ceremony for his friend but had become aggressive since his return. The complainant and his family were planning to take him to the hospital for treatment, however this did not go well with the deceased. He accused the complainant of wanting to drag him to the hospital like the way he did last time in November, 2020. He left the house and would occasionally come back, have a talk and leave. On that particular day, the deceased, left home around 8 o’clock in the evening and never came back. His family only received news from the police around 12midnight that the deceased was at the Lilongwe Police Station. When they went to check on him the following morning (8th August 2022), they were told that he had died and his body was at Kamuzu Central Hospital Mortuary.

The Commission conducted an investigation into the shooting and has concluded the investigation. This report contains the findings of the investigation and recommendations to relevant stake holders.

2.0 Mandate of the Commission

The Commission is a national human rights institution (NHRI) established under chapter XI of the Constitution of the Republic of Malawi (The Constitution). The Commission is mandated to promote and protect human rights in the broadest sense possible and to investigate violations of

human rights on its own motion or upon complaints received from any person, class of persons or body. The Commission is further regulated by the Human Rights Commission Act, (Cap 3:08) with regard to its powers, functions, duties, responsibilities and operations.

3.0 Human Rights Issues

The allegations in this matter raise prima facie violations of the following rights:

- a) Right to human dignity and
- b) Right to Life

a) Right to human dignity

The Constitution in Section 19 (2) states that:

In any judicial proceedings or in any other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed. (3) No person shall be subjected to torture of any kind or to cruel, inhuman or degrading treatment or punishment. (4) No person shall be subject to corporal punishment or in any other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.

In addition, regional and international human rights instruments also protect the right to human dignity and prohibit any form of torture and degrading treatment. These instruments include the Universal Declaration on Human Rights (UDHR) in article 5, the International Covenant on Civil and Political Rights (ICCPR) under article 7; and the African Charter on Human and Peoples Rights (ACHPR) under article 5.

b) Right to life

The Constitution in Section 16 states that:

“Every person has the right to life and no person shall be arbitrarily deprived of his or her life: Provided that the execution of the death sentence 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 shall not be regarded as arbitrary deprivation of his or her right to life.”

The right to life and right to liberty are pre-requisite for the enjoyment by other rights, and according to Section 45 of the Constitution, these rights cannot be derogated.

In addition, regional and international human rights instruments also enshrine the right to life and prohibit arbitrary deprivation of life. These instruments include the Universal Declaration on Human Rights (UDHR) article 3, the International Covenant on Civil and Political Rights (ICCPR) under article 6; and the African Charter on Human and Peoples Rights (ACHPR) under article 4.

The African Commission on Human and Peoples Rights (ACHPR) held that any violation to the right to life without due process amounts to arbitrary deprivation of life (Forum of Conscience vs. Sierra Leone, Communication 223/98).

4.0 Purpose of the investigation

- a) To establish circumstances leading to the shooting of the deceased;
- b) To establish the medical condition of the deceased;
- c) To find out whether the police officer acted according to the law or not;

5.0 Methodology

The investigation was conducted through in-depth interviews, examination of scene, analysis of video footage, review of documents, laws and reports. The Commission visited the scene of crime at Gateway Mall and watched and analyzed the CCTV footage of the incident outside Acres Bar.

6.0 Findings

- 6.1 Based on the facts and evidence gathered during the investigation, as well as the legal analysis, the Commission has come up with the following findings:
 - a) THAT the deceased, aged 36, was living with his mother at Area 49, Gulliver in Lilongwe and was a gym trainer by profession.
 - b) THAT the deceased had a mental health problem. This is based on the evidence from the brother to the deceased and the medical report from St. Johns of God Hospital Services.
 - c) THAT the medical report stated that there was a positive family history of mental illness. During the early days of admission at the clinic he exhibited the following: talkativeness, overfamiliarity, elated mood, psychomotor agitation and flight of ideas.

- d) THAT on the day of his death, the deceased became aggressive and violent. The complainant (deceased's brother) testified to this and the CCTV footage showed the same as well as the testimonies of the bartenders.
- e) THAT the CCTV recorded that around 10 p.m. the deceased was seen at Gateway Mall premises where he visited Acres Bar.
- f) THAT upon entering Acres Bar, the deceased ordered a bottle of water but he did not pay for it.
- g) THAT when bartender Malunga followed the deceased and asked him about payment for the water bottle, the deceased reacted violently and roughed up the bartender.
- h) THAT police officer David Chitsike arrived at Acres Bar whilst carrying a rifle in the company of the guard. No other police officer accompanied him.
- i) THAT Chitsike calmed down the deceased for some minutes and tried to reason with him.
- j) THAT the deceased beat up the Chitsike who fell down together with his rifle and the deceased struggled with him to confiscate the rifle.
- k) That the Deceased provoked bar tenders at acres bar and officer Chitsike.
- l) THAT the deceased was overpowered by the security guards who joined the fracas to help Chitsike
- m) THAT the deceased hid under the counter of the bar where the bar attendant Bandawe went in to protect the bar materials and money.
- n) THAT Chitsike threatened to shoot the deceased and the deceased surrendered his arms in the air begging Chitsike not to shoot him
- o) THAT the deceased used Bandawe as a shield for him not to be shot by Chitseka
- p) THAT despite the pleas from the deceased Chitsike shot at and killed the deceased from a distance of about two metres.
- q) THAT Chitsike was arrested, charged with murder and is remanded at Maula Prison pending trial.
- r) THAT according to the postmortem examination which was conducted on 11th August, 2022 at KCH by Malmed Healthcare Services, (Attachment # 1) the deceased died of unnatural death from gunshot wounds and the bullet was retrieved from his body.

- s) THAT the postmortem report further stated that the deceased was shot from an oblique angle with barrel of the gun pointing downwards at him; not a common accidental scuffle related shooting situation.

7.0 RECOMMENDATIONS

Pursuant to the powers conferred on it by Section 130 of the Constitution and Section 22 of the Human Rights Commission Act, the Commission makes the following recommendations:

7.1 Malawi Police Service

- 7.1.1 The Malawi Police Service must expeditiously conclude criminal investigations into the death of the deceased.
- 7.1.2 Depending on the outcome of the criminal investigation of Police Officer Chitsike, the Director of Public Prosecutions should ensure timely prosecution of the case to ensure that that justice is served for both the family of the victim and the perpetrator.
- 7.1.3 The Malawi Police Service should consider including in the police training curriculum on handling of persons with mental health problems and initiate in-service training on the same for police officers.
- 7.1.4 Malawi police Service must investigate the conduct of officer Chitsike regarding the allegation that he reported for duties while under the influence of alcohol.

7.2 Ministry of Health

- 7.2.1 Ministry of Health should increase public awareness on mental health issues and establish helpline for the public to access where a person is with mental health issues need immediate assistance.

7.3 Deceased's family

- 7.3.1 The family of the deceased have a right in a civil claim to seek for compensation for loss of life which was arbitrarily taken by Officer Chitsike.

8.0 Conclusion

This report has addressed the human rights issues pertaining to the shooting and subsequent death of Chikondi Makawa. The evidence gathered by the Commission points to the fact that officer Chitsike used unnecessary force to try to contain Mr. Makawa who was mentally incapable at the time, violating his rights in the same vein and contravening the Constitution and international human rights principles and standards.

The report has made recommendations to relevant authorities to take action. The Commission is ready to work with all these authorities and to ensure that the violations of human rights identified in this report are remedied. The Commission will follow up on the progress made on all recommendations in this report by 31st January, 2023.

**SCADER LOUIS
CHAIRPERSON**

16th December, 2022