MALAWI HUMAN RIGHTS COMMISSION

AN INVESTIGATION INTO THE DEATH OF SAM MWENEGAMBA IN POLICE CUSTODY – KARONGA POLICE STATION

DECEMBER 2023
EXECUTIVE SUMMARY

On Saturday, December 2nd, 2023, the Malawi Human Rights Commission (hereinafter referred to as “the Commission”) received communication from Commissioner of Police (ComPol) for the Northern Region, Noel Kaira, regarding the death of a suspect at Karonga Police Station. The ComPol requested the Commission to attend the postmortem procedure. It was learnt that the deceased had been arrested following his participation in mass demonstrations and the matter had attracted public attention. The Commission conducted an investigation into the matter, together with officers from the Independent Complaints Commission from 3rd to 6th December 2023.

The investigation was carried out under the following objectives:

a) To establish circumstances leading to the death of the deceased;
b) To determine if there was any neglect, mistreatment, or undue force that contributed to his demise.
c) To examine the conditions of detention, treatment of detainees, and adherence to established protocols to ensure the preservation of human dignity.

The investigation was conducted through in-depth interviews, observing the post mortem procedure and review of a post mortem report. Based on the facts and evidence gathered during the investigation, as well as the legal analysis of the same, the Commission has come up with the following findings:

a) THAT according to the testimony of the relatives of the deceased, the deceased, aged 36, resided with his father in Karonga and worked as a bicycle operator and a security guard.
b) THAT after the demonstrations which occurred in Karonga on November 28, 2023 there were incidences of burning tires, throwing stones at police officers and cars, and vandalism of shops including SEEDCO, ADMARC, Oil Shop, and SFFRFM.
c) THAT the police dispersed the rioters using tear gas and apprehended over 30 suspects, including the deceased, Sam, on November 28, 2023.
d) THAT the deceased was arrested while intoxicated.
e) THAT according to testimonies from inmates, the deceased struggled with alcohol addiction, spending a significant portion of his earnings on alcohol.
f) THAT the deceased began exhibiting signs of mental illness on November 30, 2023.
g) THAT the Prosecutor was informed of the deceased's behavior on December 1, 2023, but failed to promptly notify authorities for medical attention.

h) THAT Prosecutor Phiri informed the court of the deceased's illness, leading to the intended withdrawal of the charge sheet.

i) THAT Prosecutor Phiri did not inform Custody Officer Mpombeza of the deceased's mental state before locking him up after court proceedings.

j) THAT Mpombeza did not check the health condition of the inmates including the deceased before locking them in.

k) THAT according to the testimonies of all the inmates and former inmate Fundi, on the day of his death, the deceased showed mental health signs such as nonsensical talking, restlessness, stepping on his fellow inmates and banging of his head to the wall.

l) THAT the deceased was shivering, sweated too much and asked for water frequently.

m) THAT the mental health problems could have been triggered by a certain health problem since there was no any history of mental illness on the deceased.

n) THAT according to the testimonies of inmates, Custody Officer Banda was notified of the conduct of the deceased and did not act up until when he was told that the deceased had collapsed.

o) THAT according to the testimony of Fundi, Custody Officer Banda did not ask the inmates to tie the suspect. However, it was a suspect from another cell who shouted that they should tie the deceased.

p) THAT according to the testimonies of both the inmates and Prosecutor Phiri, the deceased together with other inmates complained of hunger which according to the post mortem report, the deceased’s stomach had no food in it.

q) THAT the relatives to the deceased did not visit him whilst in police custody and did not report to police of his missing.

r) THAT the deceased self-harmed himself.

s) THAT according to the post mortem examination which was conducted by Professor Liomba on 3rd December, 2023, the deceased died of Subdural haemorrhage due to blunt trauma to the skull; Epidural haemorrhage and severe dehydration as a contributing factor and Micronodular liver cirrhosis due to alcohol abuse. In other words, the deceased died as
a result of head injuries, dehydration and liver damage due to prolonged alcohol consumption.

t) THAT two police officers Chakaka and Tsambalikagwa were wounded by the rioters.

t) THAT two police vehicles were stoned and smashed by the rioters.

v) THAT the police officers had no PPEs during their operations.

Based on these findings, the Commission has concluded that Mr. Sam Mwenegamba's death resulted from head injuries, severe dehydration and liver damage due to alcohol abuse. The Commission has also noted negligence on the part of the police officers, namely Banda, Mpombeza, and Phiri, in their handling of the deceased while he was in their custody, especially after being informed of his behavior and observing his mental status.

**Recommendations**

✓ The Malawi Police Service is urged to take disciplinary action against Banda, Mpombeza, and Phiri for negligence in the performance of their duties, as stipulated by the Police Standing Orders.

✓ The Malawi Police Service is advised to incorporate training modules on the proper handling of individuals with mental and physical health issues into its curriculum, and to conduct in-service training programs to enhance the skills of police officers in this regard.

✓ The Malawi Police Service should assist injured officers Chakaka and Tsambalikagwa in seeking compensation from the Ministry of Labour.

✓ The Malawi Police Service must prioritize the procurement of Personal Protective Equipment (PPEs) and Armored Personnel Carriers (APCs) to safeguard the lives of police officers during the maintenance of public order.

✓ The ICC should investigate the negligence of the Police Officers mentioned in this report and come up with appropriate disciplinary measures to be undertaken by police.

Chikondi Chijozi
CHAIRPERSON
1. INTRODUCTION

1.1 Background
On 2\textsuperscript{nd} December, 2023, the Malawi Human Rights Commission (hereinafter referred to as “the Commission”) received communication from Commissioner of Police (ComPol) for the Northern Region, Noel Kaira, regarding the death of a suspect at Karonga Police Station. The Commissioner Kaira requested the Commission to attend the postmortem procedure. It was also learnt from social media that the deceased had been arrested following his participation in mass demonstrations in the district, and the matter had attracted public attention.

The investigation was jointly conducted with a team of investigators from the Independent Complaints Commission (ICC) from 3\textsuperscript{rd} - 6\textsuperscript{th} December 2023.

1.2 Mandate
The Commission, established under chapter XI of the Constitution of the Republic of Malawi, operates as the National Human Rights Institution (NHRI) with a mandate to promote and safeguard human rights comprehensively. It is empowered to investigate human rights violations proactively or in response to complaints from individuals, groups, or organizations. Governed by the Human Rights Commission Act (Cap 3:08), the Commission is entrusted with powers, functions, and responsibilities pertaining to the protection and promotion of human rights.

In light of the circumstances surrounding the death of deceased and the various human rights concerns arising from the incident, the Commission initiated investigations into the matter. These investigations are aimed at uncovering any potential violations of human rights and ensuring accountability for those responsible.

1.3 Human Rights Issues
The allegations in this matter raised \textit{prima facie} violations of the following rights:

\textbf{a) Right to life}

The Constitution of the Republic of Malawi (The Constitution) \textit{under Section 16 states that}:

\begin{quote}
“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
\end{quote}
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 instruments on human rights also enshrine the right to life and prohibit arbitrary deprivation of life. These instruments include the Universal Declaration on Human Rights (UDHR) in 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).

b) Right to human dignity

The Constitution in Section 19 states that:

(1) The dignity of all persons shall be inviolable

(2) 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.

Furthermore, both regional and international human rights instruments safeguard the fundamental right to human dignity and explicitly forbid any manifestation of torture or degrading treatment. These instruments include the Universal Declaration of Human Rights (UDHR) in Article 5, the

2.0 OBJECTIVES, METHODOLOGY AND LIMITATIONS

2.1 Objectives

d) To establish circumstances leading to the death of the deceased;

e) To determine if there was any neglect, mistreatment, or undue force that contributed to his demise.

f) To examine the conditions of detention, treatment of detainees, and adherence to established protocols to ensure the preservation of human dignity.

2.2 Methodology

The investigation was conducted through in-depth interviews, observing the postmortem procedure and reviewing the postmortem report. Interviewees included police officers, relatives of the deceased, fellow detainees and other witnesses. (refer to Appendix 1 for a detailed list of interviewees)

2.3 Collection and review of relevant documents

The investigation team collated and reviewed relevant laws, policies and guidelines and a postmortem report.

The following statutes were referred to in analyzing the facts and making the recommendations:

i. The Constitution of the Republic of Malawi;

ii. The Human Rights Commission Act

iii. The Police Act

iv. The International Covenant on Civil and Political Rights

v. Convention Against Torture

vi. The African Charter on Human and Peoples Rights and

vii. The Penal Code

3.0 PRESENTATION OF FACTS AND EVIDENCE

Based on the investigations conducted, the Commission has gathered the following facts and
3.2. Evidence from Relatives

3.2.1 Patson Mwenegamba, aged 75, stated that he was the paternal uncle of the deceased and had been residing together. He last saw the deceased on 24th November, 2023 and was unaware of Sam's arrest by the police until December 1st, 2023, when he received notification of his death.

3.2.2 Patson Mwenegamba stated that the name of the deceased was Sam Mwenegamba, born in 1987 and at the time of his death he was 36. The late Sam Mwenegamba was not married but had a 10-year-old daughter.

3.2.4 Other relatives, involved in the interview include Jackson Mwenegamba and Albert Simfukwe.

3.2.5 The deceased worked as a bicycle operator and visited Jackson Mwenegamba's residence on November 28th, 2023, to repair his bicycle.

3.2.6 They emphasized that Sam was not sick, was not prone to violence, did not engage in alcohol consumption, and had no history of criminal activity.

3.2.7 Jackson relayed information received from another inmate, Fundi, who had been released by the police on December 1st, 2023, indicating that Sam had been subjected to physical assault by the police. Fundi had occupied the same police cell with Sam and two others.

3.2.8 The family expressed profound grief over Sam's untimely demise, highlighting its significant impact on his father.

3.2.9 The family criticized the police for failing to notify them of Sam's presence in the police cell following his arrest.

3.2.10 Albert stated he met with Sam at Karonga Magistrate Court, where Sam had voiced complaints about feeling unwell.

3.3 Evidence from Inmates

3.3.1 Brian Gondwe (fellow Inmate) testified that he knew the deceased before their arrests, describing him as a heavy drinker who habitually spent his earnings from casual labor on alcohol. Gondwe further attested to sharing a cell with Sam at the police station.

3.3.2 In the afternoon of December 1st, 2023, they were escorted to court by Prosecutor Mtepuka. Gondwe observed the deceased behaving strangely at court and this prompted the court to consider granting him bail. However, before the court had concluded its procedures, Sam abruptly ran after
Brian to the police car and returned to the police cell.

3.3.3 Gondwe recounted that the Sam persisted in disruptive behavior within the cell, including head-banging against the wall and injuring himself by kicking a door nut, which caused a wound to his mouth. The deceased frequently complained of hunger, as his relatives failed to visit and provide him with food, except for one occasion when his employer, Chance, visited him.

3.3.4 Gondwe disclosed that he and other inmates informed police officer Elijah Banda, who was on duty, about Sam's escalating abnormal behavior. Banda instructed them to tie him, although the inmates refused. Banda cited security concerns for not opening the cell during night time hours.

3.3.5 Gondwe said that around 5 am, he and fellow inmates observed that Sam had become unresponsive, weak, and soiled himself. They promptly notified the officers, and it took nearly an hour for the police to transport him to the hospital.

3.3.6 Derick Simwaka and Prosper Komba provided testimonies similar to Gondwe's, indicating their familiarity with Sam while in police custody. Simwaka added that Sam complained of thirst, continuously requesting water from the inmates, who obliged and even sought more water from the neighbouring cell.

3.3.7 Sugzo Mwangonde Kaole's testimony echoed Gondwe's, with the addition that Sam began speaking nonsensically the day before December 1st, 2023, when called in for statement recording. This rendered him uncertain if Sam would cooperate with the police.

3.3.8 Kaole further noted that the deceased was experiencing heavy sweating, stepping on other inmates, and, between 1 and 2 a.m., Sam slept at the cell door, influencing others to follow suit. In total, there were sixteen (16) inmates in the cell.

3.3.9 Kaole suggested that Sam's illness was provoked by not taking alcohol during the days he was in custody, and indicated that only alcohol could have aided his survival.

3.3.10 Importantly, Kaole emphasized that, despite not hearing Sam complaining about police brutality, he frequently expressed dissatisfaction with the lack of food and a desire to return home due to the absence of visits from his relatives. Suzgo and other inmates shared their food with Sam.

3.4 Evidence from former inmate (Fundi)
3.4.1 Soon after the postmortem examination, Professor Liomba gathered the deceased's relatives and all relevant stakeholders to give an update on the preliminary findings. However, a disturbance arose during the briefing. Jackson Mwenegamba, a relative of the deceased, voiced a grievance in the presence of the police, family members, the Independent Complaints Commission, Professor Liomba, and representatives from the Commission. Mwenegamba alleged that the police had released an eyewitness who claimed to have seen officers physically assaulting the deceased. Consequently, the Commission succeeded in locating the aforementioned eyewitness, identified as Albert Silungwe aka Fundi.

3.4.2 Fundi recounted his arrest by the police on November 28th, 2023, at approximately 3 p.m., followed by his placement in a cell around 5 p.m. In the cell, he was attacked by another inmate who stole his flash disk and tried to grab his K100,000.00 cash which had kept inside his pants at the time of his arrest. After seeking assistance, the police transferred him and other detainees to a different cell, where he encountered Sam, the deceased.

3.4.3 He elaborated that Sam had been arrested while intoxicated, and during their time together in the cell, Sam frequently lamented the absence of visits from his relatives. Only his employer visited him, providing a drink and Flitters (Mandasi).

3.4.4 On Thursday, November 30th, 2023, Sam began showing signs of mental distress. By Friday, December 1st, 2023, they were escorted to court, where Sam appeared relatively stable before being returned to the cells.

3.4.5 According to Fundi, Sam displayed symptoms such as trembling, excessive sweating, and frequent requests for water. Brian Gondwe, another inmate spoke to Fundi, attributed these symptoms to Sam's alcohol addiction, suggesting that his condition worsened due to alcohol withdrawal. During the night, Sam resumed disruptive behavior, banging on objects and disturbing other inmates.

3.4.6 Despite inmates' appeals for assistance, the police officers on duty did not respond promptly. They eventually arrived around 5 a.m., upon being informed that Sam had collapsed and required medical attention.

3.4.7 Fundi alleged that he was personally subjected to police brutality during his arrest, including
physical assault and the insertion of a tear gas canister into his mouth. However, Fundi clarified that he did not witness any physical assault on Sam by the police, as their arrests occurred separately, and they only encountered each other in the cell.

3.4.8 He disclosed that Jackson Mwenegamba had urged him to falsely implicate the police in assaulting the deceased. However, he indicated that he only provided correct information without adding or subtracting anything.

3.5 Evidence from Police

3.5.1 The Officer In-charge

3.5.1.1. The Officer In-charge (O/C) for Karonga Police Station, Edwin Mukhambo-ASP reported that on November 28th, 2023, Karonga Youth for Justice and Development, Karonga Youth for Action, and Karonga Concerned Citizens, in conjunction with Bonnie Kalindo AKA Winiko, organized demonstrations from Karonga roundabout to the District Commissioner’s (DC’s) Office. The demonstration commenced peacefully around 9:00 a.m., and the petition was successfully delivered to the DC’s office around 10:30 a.m. After delivering the petition, organizers instructed the demonstrators to disperse peacefully.

3.5.1.2 However, approximately thirty minutes after dispersal, some individuals regrouped, predominantly near Chipiku chain stores and banks, engaging in road blockades, tire burning, and assaulting police officers stationed in those areas, resulting in injuries to two officers. They also obstructed Chitipa road. The police initiated an operation, employing tear gas to disperse the demonstrators and restore peace and security, which concluded around 10 p.m.

3.5.1.3 During the operation, four break-ins occurred at SEEDCO, where maize seed and MK1.6 million cash were stolen; ADMARC, where bags of rice and maize were stolen; SFFRFM; and a local businessman's shop, where 94 buckets of oil were taken. Several vehicles, including two police vehicles, were vandalized. The police arrested over 30 individuals, with assistance from members of the public fatigued by tear gas. Among those arrested was Sam Mwenegamba, the deceased.

3.5.1.4 Sam and other detainees were held in custody until December 1st, 2023, when they were taken to Karonga Magistrate Court. While at court, Sam exhibited abnormal behavior and was
returned to the police cell in the afternoon. Around 5 a.m. on December 2nd, 2023, the O/C received a call reporting that a suspect had collapsed in the cell. The police transferred him to Karonga Hospital, where he passed away between 5:20 and 6 a.m.

3.5.1.5 The Officer In-charge expressed concerns regarding overcrowding at Karonga police station due to the absence of facilities to hold remandees, necessitating their transfer to Chitipa and Mzuzu Prisons, which poses financial challenges.

**3.5.2 Testimony from A/Supt Freedom Sakala**

3.5.2.1 Freedom Sakala indicated that at the time of arrest, the deceased, hailing from Kafikisira Village, T/A Kyungu in Karonga district, exhibited signs of intoxication, trembling, and gave conflicting statements. Additionally, it was reported that he displayed erratic behavior and trembling when taken to court on December 1st, 2023.

3.5.2.2 Prior to his demise, fellow inmates informed Senior Duty Officer S/Insp. Phiri that the deceased was self-harming by striking himself against the wall and displaying erratic behavior similar to mental instability. Notably, no relatives visited him during his incarceration. Upon receiving a report of that Sam had collapsed around 5 a.m., Sakala advised the on-duty officers to transport him to the hospital, where he was pronounced dead.

**3.5.3 Inspector Evance Kalikeni Mtepuka, Station Prosecution Officer,**

3.5.3.1 Evance Kalikeni Mtepuka testified that on November 30th, 2023, he received a list to prepare charge sheets.

3.5.3.2 The suspects faced charges in three categories of offenses: Endangering Road Users; Breaking into a Building and Committing a Felony Therein (Cooking Oil); and Breaking into a Building and Committing a Felony Therein (SEEDCO). Sam was implicated in the Endangering Road Users crime.

3.5.3.4 Mtepuka assigned Sam's case and others to Sgt. Grace Phiri for appearance in First Grade Magistrate (FGM) Kantikana’s court while he handled other cases in FGM Kalembo’s court. However, bail was not granted to any of the suspects, and the court postponed the bail ruling to December 6th, 2023.
3.5.3.5 Around 10 p.m., Mtepuka served as a Senior Monitoring Officer under the supervision of Supt. Francis Jeke, conducting monitoring exercises outside the police station premises. Following the 10 p.m. briefing, no complaints were reported, and he concluded his duty at 4:24 a.m. after informing Station Officer (S/O) Snr. Supt. Ngwala. S/Insp. Yunus Phiri reported 79 suspects in custody to him.

3.5.3.6 Shortly after returning home, Mtepuka received a call from Sgt. Elijah Banda reporting that a suspect had collapsed in the cell. He rushed to the scene and found the suspect being taken out of the cell, with blood stains visible around Sam's mouth. Mtepuka promptly informed the Station Officer.

3.5.3.7 Mtepuka transported Sam to Karonga Hospital, where medical officers declared him dead.

3.5.4 **Superintendent Francis** Jeke, Station Operations Officer,

3.5.4.1 Francis Jeke testified that the police had been informed of peaceful demonstrations organized by three Non-governmental Organizations (NGOs) led by Lyton Mangochi, Simsokwe, and Bon Kalindo.

3.5.4.2 Jeke, overseeing the operation, agreed with the demonstrators on a route from the roundabout to the District Commissioner’s (DCs) office. He issued operation orders and positioned officers strategically at locations such as banks and shops.

3.5.4.3 The demonstrations commenced around 9 a.m., proceeding peacefully to the DC’s office until approximately 10:30 a.m. The organizers dispersed the demonstrators, signaling the end of the protests. However, the police remained vigilant to ensure the demonstrations had concluded.

3.5.4.4 Twenty minutes later, Jeke received a call from Superintendent Ronald Msuku reporting that at Chipiku Roundabout, some individuals began throwing stones at police officers. Although the police dispersed them initially, they regrouped at the roundabout leading to Songwe road, obstructing traffic and setting tires ablaze.

3.5.4.5 Attempts to engage with the group leaders proved futile, prompting the police to withdraw to Total Filling Station to formulate a strategy. They opted for a dual approach: Senior Superintendent John Sitima led one group toward Chitipa road, while Jeke took the filling station
road, dispersing the rioters with tear gas and clearing the debris.

3.5.4.6 The situation escalated as rioters blocked Chakanda, ADMARC, and Elusion Club along Chitipa road. Rioters from nearby villages joined, pelting stones at the police. In the ensuing confrontation, police vehicles with registration numbers MP 2294 and MP 2544 were damaged, and Sergeants Happy Chakaka and Blessings Tsambalikagwa sustained injuries, prompting the call for reinforcements and further use of tear gas.

3.5.4.7 By approximately 2 p.m., the police decided to initiate arrests as the rioters targeted shops, persistently blocking roads and setting fires. The composition of the rioters shifted from predominantly children in the morning to primarily adults in the afternoon.

3.5.4.8 Reports reached the police of break-ins at SFFRFM AIP Selling Point, a shop selling cooking oil, and SEEDCO shop. While attempts were made to break these shops, the presence of strong burglar bars thwarted entry into SFFRFM shop. However, items such as cooking oil, cash exceeding one million, desk top computer and seeds were stolen. Two individuals were apprehended for being found in possession of 20-liter tins of cooking oil.

3.5.4.9 Tear gas was deployed in Chakana village, leading residents to approach the police, expressing readiness to assist in apprehending the rioters, which they did.

3.5.4.10 Over 30 individuals were arrested, leading to a calm situation by around 10 p.m.

3.5.4.11 Jeke mentioned that he did not personally witness the arrest of Sam and was uncertain of his precise location at the time of arrest. However, Sam’s name appeared on the list of detained suspects.

3.5.4.12 Furthermore, between November 28th, 2023, and December 1st, 2023, Jeke received no reports of any medical emergencies in police custody.

3.5.4.13 Jeke concluded by highlighting the inherent risks faced by police officers during demonstrations, particularly due to the absence of Public Order Equipment (PPE). The use of stones and other dangerous weapons by demonstrators poses significant threats to officers’ safety while carrying out their duties.

**3.5.5 B5180 Sgt. Elijah Banda**
3.5.5.1 Elijah Banda served as a Custody Officer responsible for managing individuals in the cells, assessing their health, and verifying their presence through a checklist, although officers are not allowed to see inmates inside the cells.

3.5.5.2 On the night of November 30th to December 1st, 2023, he was on duty from 10 p.m. to 6 a.m., during which he locked in 75 inmates after taking over from Constable Brighton Mpombeza.

3.5.5.3 While on duty, he overheard singing from one cell and inquired if there was someone showing signs of mental distress, but the inmates denied such a situation.

3.5.5.4 Between 3:30 a.m and 4 a.m., an inmate shouted from the cell, reporting that an individual had collapsed. Banda went to investigate and found Sam leaning against the cell wall.

3.5.5.5 He promptly informed Senior Inspector Yunus Phiri, who ordered Sam's removal from the cell. Although Inspector Mtepuka had left around 3 a.m., he returned upon being contacted around 4 a.m., accompanied by the driver.

3.5.5.6 Between 4:30 a.m and 5 a.m., Sam was transported to the hospital; he was still breathing during the transfer.

3.5.5.7 Banda refuted claims of receiving any reports from inmates regarding Sam's illness.

3.5.5.8 Furthermore, he denied instructing inmates to tie the deceased.

3.5.5.9 Banda concluded that while the police routinely check on crying individuals in the cells, they do not typically address situations where inmates are singing.

3.5.6 #3863 Sgt. Grace Moja Phiri,

3.5.6.1 Grace Phiri, a Prosecutor, testified that she handled Sam's case before FGM Kantikana.

3.5.6.2 While organizing the suspects, she encountered a communication breakdown with Sam.

3.5.6.3 She informed the magistrate about Sam's mental challenges and requested withdrawal of his case, but the magistrate advised waiting until after the plea.

3.5.6.4 Phiri couldn't recall whether Sam applied for bail due to the large number of suspects.
3.5.6.5 Inmates complained to her about not receiving food from their relatives.

3.5.6.6 Phiri admitted not remembering the process of transferring inmates from court to police and acknowledged not informing the custody officer about Sam's condition.

3.5.7 #B7678 Const. Brighton Mpombeza

3.5.7.1 Brighton Mpombedza testified and acknowledged being on duty from 2 p.m. to 10 p.m. of 1st December, 2023 serving as a Custodian Officer.

3.5.7.2 In his role, he oversees the cells, food distribution to inmates, and their overall health. On that day, he managed over 70 inmates.

3.5.7.3 Upon the suspects' return from court, he conducted searches but did not assess their health conditions.

3.5.7.4 He confirmed that the prosecutors did not inform him about any inmate's medical condition.

3.5.7.5 Despite the closeness of the cells to his desk, he noted no instances of inmates singing.

3.5.8 #B5884 Sgt. Happy Chakaka and #B3213 Sgt. Madalitso Tsambalikagwa,

3.5.8.1 Happy Chakaka and Madalitso Tsambalikagwa were stationed at the Border Police Unit, conducting patrols in the SANA to Petroda area on November 28, 2023, around 9 a.m.

3.5.8.2 They witnessed rioters pelting stones at a police vehicle, setting tires ablaze at the Roundabout, and heard of intentions to target the Chipiku shop. Additionally, they received reports of vandalism from ADMARC.

3.5.8.3 Around 4 p.m., they decided to commence arrests.

3.5.8.4 While Chakaka attempted to load suspects into the Kaporo Police vehicle, rioters pelted stones at it, injuring him in the eye and shoulder, causing him to lose control and fall on his arm.

3.5.8.5 Tsambalikagwa was struck on the neck by a stone while apprehending rioters, causing him to lose consciousness and wake up in the hospital.

3.5.8.6 Karonga Police Station provided medical reports and transportation to and from the
hospital.

3.5.8.7 Both officers expressed trauma from the ordeal.

3.5.8.9 They raised concerns about patrolling on foot, which endangered their lives. Karonga Police Station possesses only five aged vehicles, with only one deemed roadworthy beyond the district. They recommended acquiring Armored Police Vehicles (APCs) for better safety during demonstrations than the open vehicles available.

3.5.8.10 Additionally, they stressed the urgent need for Personal Protective Equipment (PPE) and an adequate supply of tear gas, especially with the approaching election period, when violence tends to escalate.

3.6 Evidence from Karonga Magistrate Court

3.6.1 Yamikani Chihana, a Court Clerk, testified that on December 1, 2023, he organized the accused individuals in court before the magistrate arrived. It was during this time that he noticed Sam's mental distress, as reported by his fellow inmates.

3.6.2 Sam exhibited disruptive behavior in court; when asked about his Traditional Authority's name, instead of stating "Kyungu," he responded with "Mtemewamateme," eliciting laughter from the court.

3.6.3 Despite others raising their hands to apply for bail, Sam did not. However, the police objected to granting bail to the suspects.

3.6.4 Prosecutor Phiri brought up Sam's condition to the Magistrate, who decided to withdraw the charge sheet.

3.6.5 Chihana concluded that aside from his mental behavior in court, Sam showed no physical signs of injury. It was also noted that Sam had never previously appeared in court.

3.7 Medical Evidence and Records

3.7.1 The Commission also took part in the post mortem procedure conducted by Prof. Ndalama George Liomba, the Pathologist and was assisted by Maggie Liomba, a retired, qualified Medical Laboratory Technician and Laboratory Manager, who is also his wife on 3rd
December, 2023; who gave the preliminary findings as follows:

- Dehydration
- Wounds (face, neck sides, back of the head and arms)
- Big liver against his body
- Blood clotting (chest wall, ribs wall, stomach, waist and brain)
- Swollen blood vessels and
- Brain injury due to counter movement when he was kicking besides the brain.
- Specimen were taken to prove the cause of the death.

3.7.2 According to Prof. Liomba’s report, (Attachment 1) Sam died because of Subdural haemorrhage due to blunt trauma to the skull; Epidural haemorrhage and severe dehydration as a contributing factor and Micronodular liver cirrhosis due to alcohol abuse. In other words, a number of contributing factors led to the death of the deceased.

4.0. APPLICABLE LAW

4.1 This section discusses the national legal and institutional framework applicable to the issues raised in the present matter. The section also discusses the applicable foreign case law and the regional and international human rights instruments which Malawi is a party to.

4.1.1 Protection of human rights and freedoms

The Constitution of the Republic of Malawi (the Constitution) guarantees the protection of rights and freedoms. Section 15(1) of the Constitution states:

“the human rights and freedoms enshrined in this Chapter shall be respected and upheld by the executive, legislature, judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Malawi and shall be enforceable in the manner prescribed in this Chapter”

4.1.2 The right to life

The Constitution guarantees the right to life. Section 16 of the Constitution provides:
“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.”

Various 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); the International Covenant on Civil and Political Rights (ICCPR); and the African Charter on Human and Peoples Rights (ACHPR).

4.1.3 Human dignity and personal freedoms

Section 19 of the Constitution provides that:

1) The dignity of all persons shall be inviolable
2) 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 subject to torture of any kind or cruel, inhuman or degrading treatment or punishment
4) No person shall be subject to corporal punishment in connexion with any judicial proceedings or any other proceedings before any organ of the State
5) No person shall be subject to medical or scientific experimentation without his or her consent
6) Subject to this Constitution, every person shall have the right to freedom and security of person, which shall include the right not to be –
   a) detained without trial;
   b) detained solely by reason of his or her political or other opinions or
   c) imprisoned for inability to fulfil contractual obligations

4.1.5. Causation of death

According to Section 215 of the Penal Code a person is deemed to have caused the death of another although his act is not the immediate or not the sole cause of death:

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1 See Article 3
2 See Article 6
3 See Article 4
(a) If he inflicts bodily injury in consequence of which that other person undergoes surgical or medical treatment which causes death.

(b) If he inflicts a bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living.

(c) If by actual or threatened violence he caused another to perform an act which caused the death of such person.

(d) If by any act or omission, he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death.

(e) If his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.

5.0 ANALYSIS OF FACTS AND EVIDENCE

5.1 Whether the right to life and dignity was preserved

5.1.1 The facts and evidence indicate that on the day of the incident, the victim displayed signs of mental health issues, including talkativeness, restlessness, and self-harming behavior.

5.1.2 Evidence suggests that the deceased showed signs of dehydration, prompting fellow inmates to continuously provide him with water.

5.1.3 It was established that the deceased was sweating and shivering in the cell.

5.1.4 It was established that the deceased was intoxicated at the time of his arrest.

5.1.5 The deceased complained of hunger, he frequently expressed concern with the lack of food and a desire to return home due to the absence of visits from his relatives. The status quo of experiencing hunger was supported by findings during the post-mortem examination which revealed an empty stomach.

5.1.6 It was established that the deceased's relatives never visited him while he was in custody, and they were unaware of his absence.

5.1.7 The victim's behavior in the police cell, including stepping on fellow inmates, posed a risk of retaliation from others, endangering both himself and others.
5.1.8 The custody officer Banda and the Prosecutor Phiri were made aware of the deceased's behaviour in the cell and at the court respectively.

5.1.9 Despite being informed, Custody Officer and Prosecutor failed to investigate and report the situation to the police authorities, neglecting their duty of care.

5.1.10 The evidence suggests a delay in seeking medical attention for the deceased's mental health issues by the police.

5.1.11 Testimonies from inmates revealed that the deceased engaged in self-harming behavior, resulting in facial injuries.

5.1.12 No evidence was found indicating physical assault inflicted upon the deceased by the Police.

5.1.13 It was discovered that the relatives of the deceased coerced the former inmate Fundi, into providing false evidence implicating the police in assaulting the deceased.

5.1.14 The circumstances following the demonstrations also put the lives of two police officers in danger, emphasizing the importance of upholding the right to life for all individuals involved. According to Section 16 of the Constitution, every individual, including law enforcement officers, is entitled to the right to life, protected from arbitrary deprivation.

5.1.15 Post-mortem examination results conducted by Pathologist Liomba indicated the cause of death as Subdural haemorrhage due to blunt trauma to the skull, with Epidural haemorrhage and severe dehydration identified as contributing factors, along with Micronodular liver cirrhosis due to alcohol abuse.

5.1.16 In this case, the death was not result of physical assault by the police but rather due to Subdural haemorrhage and Epidural haemorrhage, dehydration, and Micronodular liver cirrhosis resulting from alcohol abuse. Nevertheless, there was negligence on the part of the police for failing to either grant bail to the deceased or promptly transport him to the hospital for necessary medical attention, as mandated by law.
6.0 FINDINGS
Based on the facts and evidence gathered during the investigations, as well as the legal analysis, the Commission has come up with the following findings:

w) THAT according to the testimony of the relatives of the deceased, the deceased, aged 36, resided with his father in Karonga and worked as a bicycle operator and a security guard.
x) THAT after the demonstrations which occurred in Karonga on November 28, 2023, there were incidences of burning tires, throwing stones at police officers and cars, and vandalism of shops including SEEDCO, ADMARC, Oil Shop, and SFFRFM.
y) THAT the police dispersed the rioters using tear gas and apprehended over 30 suspects, including the deceased, Sam, on November 28, 2023.
az) THAT the deceased was arrested while intoxicated.
aa) THAT according to testimonies from inmates, the deceased struggled with alcohol addiction, spending a significant portion of his earnings on alcohol.
bb) THAT the deceased began exhibiting signs of mental illness on November 30, 2023.
cc) THAT the Prosecutor was informed of the deceased's behavior on December 1, 2023, but failed to promptly notify authorities for medical attention.
dd) THAT Prosecutor Phiri informed the court of the deceased's illness, leading to the intended withdrawal of the charge sheet.
ee) THAT Prosecutor Phiri did not inform Custody Officer Mpombeza of the deceased's mental state before locking him up after court proceedings.
ff) THAT Mpombeza did not check the health condition of the inmates including the deceased before locking them in.
gg) THAT according to the testimonies of all the inmates and former inmate Fundi, on the day of his death, the deceased showed mental health signs such as nonsensical talking, restlessness, stepping on his fellow inmates and banging of his head to the wall.
hh) THAT the deceased was shivering, sweated too much and asked for water frequently.
i) THAT according to the testimonies of inmates, Custody Officer Banda was notified of the conduct of the deceased and did not act up until when he was told that the deceased had collapsed.
jj) THAT according to the testimony of Fundi, Custody Officer Banda did not ask the inmates to tie the suspect. However, it was a suspect from another cell who shouted that they should tie the deceased.

kk) THAT according to the testimonies of both the inmates and Prosecutor Phiri, the deceased together with other inmates complained of hunger which according to the post mortem report, the deceased’s stomach had no food in it.

ll) THAT the relatives to the deceased were not aware of his arrest, did not visit him whilst in police custody and did not report to police of his missing.

mm) THAT the deceased self-harmed himself.

nn) THAT according to the post mortem examination which was conducted by Professor Liomba on 3rd December, 2023, (Attachment #1); the deceased died of Subdural hemorrhage due to blunt trauma to the skull; Epidural hemorrhage and severe dehydration as a contributing factor and Micronodular liver cirrhosis due to alcohol abuse.

oo) THAT two police officers Chakaka and Tsambalikagwa were wounded by the rioters.

pp) THAT two police vehicles were stoned and smashed by the rioters.

qq) THAT the police officers had no PPEs during their operations.

7.0 CONCLUSION

Based on the facts presented and analysis of the same, the Commission concludes that Mr. Sam Mwenegamba’s death resulted from Subdural hemorrhage due to blunt trauma to the skull due to his self-harming conduct; Epidural hemorrhage, with severe dehydration as a contributing factor, and Micronodular liver cirrhosis due to alcohol abuse.

However, the Commission notes negligence on the part of the police officers, namely Elijah Banda, Brighton Mpombeza, and Grace Moja Phiri, in their handling of the deceased while he was in their custody, especially after being informed of his behavior and observing his mental status.

8.0 RECOMMENDATIONS

In accordance with the authority vested in it by Section 130 of the Constitution and Section 22 of the Human Rights Commission Act, the Commission makes the following recommendations:

8.1 Malawi Police Service
8.1.1. The Malawi Police Service is urged to take disciplinary action against Elijah Banda, Brighton Mpombeza, and Grace Moja Phiri for negligence in the performance of their duties, as stipulated by the Police Standing Orders.

8.1.3. The Malawi Police Service is advised to incorporate training modules on the proper handling of individuals with mental and physical health issues into its curriculum, and to conduct in-service training programs to enhance the skills of police officers in this regard.

8.1.4. The Malawi Police Service should compensate the injured officers Happy Chakaka and Madalitso Tsambalikagwa in seeking compensation from the Ministry of Labour, through the Workman’s Compensation Commission.

8.1.5. The Malawi Police Service must prioritize the procurement of Personal Protective Equipment (PPEs) and Armored Personnel Carriers (APCs) to safeguard the lives of police officers during the maintenance of public order.

8.3 Independent Complaints Commission (ICC)

8.3.1 The ICC should investigate the negligence of the Police Officers mentioned in this report.
## APPENDICES

### List of interviewees

<table>
<thead>
<tr>
<th></th>
<th>Name</th>
<th>Title/Role</th>
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<tbody>
<tr>
<td>1</td>
<td>Edwin Mkhambo</td>
<td>Assistant Commissioner of Police</td>
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<tr>
<td></td>
<td></td>
<td>(Karonga Officer Incharge,</td>
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<td></td>
<td></td>
<td>Police Station Service</td>
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<tr>
<td>2</td>
<td>SCP Francis Jeke</td>
<td>Station Operations Officer</td>
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<tr>
<td>3</td>
<td>A/Supt. Freedom Sakala</td>
<td>Station Criminal Investigation</td>
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<tr>
<td></td>
<td></td>
<td>Officer</td>
</tr>
<tr>
<td>4</td>
<td>Brian Gondwe</td>
<td>Inmate</td>
</tr>
<tr>
<td>5</td>
<td>Derick Simwaka</td>
<td>Inmate</td>
</tr>
<tr>
<td>6</td>
<td>Suzgo Mwangonde Kawole</td>
<td>Inmate</td>
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<tr>
<td>7</td>
<td>Prosper Komba</td>
<td>Inmate</td>
</tr>
<tr>
<td>8</td>
<td>Insp. Evance Kaliken Mtupka</td>
<td>Station Prosecution Officer</td>
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<tr>
<td>9</td>
<td>Jackson Mwenegamba</td>
<td>Relative</td>
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<tr>
<td>10</td>
<td>Patson Mwenegamba</td>
<td>Relative</td>
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<tr>
<td>11</td>
<td>Albert Simfukwe</td>
<td>Relative</td>
</tr>
<tr>
<td>12</td>
<td>Masida Gondwe</td>
<td>Relative</td>
</tr>
<tr>
<td>13</td>
<td>Sgt. Elijah Banda</td>
<td>Custody Officer</td>
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<td>14</td>
<td>Sgt. Grace Moja Phiri</td>
<td>Prosecutor</td>
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<tr>
<td>15</td>
<td>Const. Brighton Mpombeza</td>
<td>Custody Officer</td>
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<tr>
<td>16</td>
<td>Sgt. Happy Chakaka</td>
<td>Injured Police Officer</td>
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<tr>
<td>17</td>
<td>Sgt. Madalitso Tsambalikagwa</td>
<td>Injured Police Officer</td>
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<tr>
<td>18</td>
<td>Yamikani Chihana</td>
<td>Court Clerk</td>
</tr>
<tr>
<td>19</td>
<td>Robert Silungwe AKA Fundi</td>
<td>(former Inmate)</td>
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