



AN INVESTIGATION REPORT
INTO
THE SHOOTING AND DEATH OF BLESSINGS NYONDO

MARCH 2021

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EXECUTIVE SUMMARY

Background

The Malawi Human Rights Commission (The Commission) conducted an investigation on the shooting and death of Blessings Nyondo (the victim) who was shot on 31st December 2020 and died on 8th January 2021 at Queen Elizabeth Central Hospital (QECH) in Blantyre. The Commission has concluded its investigation and this report contains findings from the investigation and recommendations to relevant stakeholders. The report has been arranged according to specific sections with respect to each of the following areas: -

1. Alleged human rights violations;
2. The legal mandate of the Commission;
3. Methodology and Limitations of the investigation;
4. Presentation of facts and evidence;
5. Analysis of facts and evidence, and
6. Factual and Legal findings;
7. Recommendations and Conclusion.

Mandate of the Commission

The Commission is empowered by the Constitution of the Republic of Malawi (The Constitution) and the Human Rights Commission Act (The Act) to carry out investigations and make recommendations on human rights issues in response to a complaint or on its own volition. Section 130 of the Constitution provides as follows:

“The Human Rights Commission shall, with respect to the applications of an individual or class of persons, or on its own motion, have such powers of investigation and recommendation as are reasonably necessary for the effective promotion of the rights conferred by or under this Constitution...”

Section 12 of the Act provides that the Commission shall be competent in every respect to protect and promote human rights in Malawi in the broadest sense

possible and to investigate violations of human rights on its own motion or upon complaints received from any person, class or persons or body.

The Commission carried out this investigation on its own motion.

Purpose of the Investigations

The overall purpose of the investigations was to establish the circumstances that led to the shooting and eventual death of the victim. Specifically, the objectives of the investigations were:

1. To establish the circumstances that led to the shooting and death of the victim;
2. To identify the human rights violations occasioned and the perpetrators of those human rights violations; and
3. To facilitate access to justice, legal remedies for the victims and recommendations to key stakeholders.

Based on the facts and evidence gathered and analysis made, the Commission has come up with the following findings:

Factual Findings

1. It was reported that on or around 18:45 hours on 31st December 2020, Ms. Lusubilo Mtawali, a resident of Nkolokosa Township in Blantyre, was allegedly attacked by three unidentified persons as she was on her way to Robbins Park in Blantyre for overnight prayers. The attackers, allegedly robbed her of her three bags and their contents. She called for help and fellow congregants who had been gathered outside Robbins Park tried to apprehend the robbers, but in vain.
2. Later on, she confirmed that she heard that one of the robbers had been shot by police. However, Ms. Mtawali could not identify the victim with particularity or certainty as being one of the three persons that had robbed her.

3. The victim was a non-residential student at the Malawi Polytechnic and a tenant at the premises belonging to Mrs. Dorothy Mwasinga in Chitawira. On the night of 31st December 2020, the victim had planned to attend overnight prayers at the Fountain of Victory Church.
4. It is on record, that he witnessed the robbery incident at Robbins Park and decided to escape from the scene. In the process, he stopped and jumped into a vehicle belonging to MBC. In the vehicle, there were three people, namely, Inspector Nambazo of Police B Company at Kanjedza; Mr. Chanunkha, a Security Officer at MBC; and Mr. Kasimu, an MBC driver. Inspector Nambazo and Mr. Chanunkha were armed with a K2C Rifle and a Boito Pump Gun respectively. Mr. Kasimu was not armed. Further, Inspector Nambazo was in police uniform.
5. According to a statement by Inspector Nambazo, the victim was out of breath and seemed confused when he entered the MBC vehicle. He just managed to say the following words, “*Ndibwino ndifere mugalimoto momuno*” (**It’s better for me to die in the vehicle**).
6. According to both Inspector Nambazo and Mr Chanunkha, the victim tried to snatch their guns but he failed. It is the Victim’s statement however, that he sought refuge from them but they accused him of being a thief and threatened to shoot him before forcing him out of the car.
7. Inspector Nambazo, Mr. Chanunkha and Mr. Kasimu managed to get out, leaving the victim alone in the Vehicle.
8. Meanwhile the crowd from the robbery scene and passersby, who had witnessed the events surrounded the vehicle baying for the victim’s blood. They thought that the victim was one of the robbers and wanted to subject him to mob justice.

9. After Inspector Nambazo, Mr. Chanunkha and Mr. Kasimu, had gotten out the vehicle, the victim jumped out of the vehicle and started running away.
10. Mr. Chanunkha pursued the victim and then shot him at the back. The victim fell down and was motionless. According to Mr. Chanunkha, he shot the victim for trying to snatch his gun away and for escaping arrest. He shot the victim in self-defense and to incapacitate the victim.
11. Both Mr Chanunkha and Inspector Nambazo failed in their responsibility by not arresting the victim when he was in the vehicle.
12. In an audio message recorded before his death, the victim stated that he witnessed the robbery incident and while escaping from the scene, he decided to seek refuge in the MBC vehicle. But as he entered the vehicle, the officers accused him of being one of the thieves and threatened to shoot him. They ordered him to get of the vehicle. He begged them not to shoot him but rather take him to a police station if they thought that he was a thief. The officers pointed their guns at him, forced him out of the vehicle and later shot at him as he was escaping.
13. The victim sustained injuries on the chest and lost a lot of blood due to the shooting. He was taken to the QECH for medical attention in the MBC vehicle by Inspector Nambazo and Mr. Chanunkha, long after he was shot. According to his friends and relatives, he was just dumped by Inspector Nambazo and Mr. Chanunkha. As a result, he did not receive urgent medical attention.
14. Later, the victim was taken to the Adult Emergency Trauma Centre (AETC) for resuscitation and then, he was admitted in Ward 5A. He went through two operations.

15. While at QECH, the victim narrated his ordeal to his friend and cousin, Bright Mkandawire. He also explained what had happened to him and what led to the shooting incident. This was preserved in an audio statement which the Commission has accessed and this report makes reference to it.
16. On 8th January, 2021 the victim died in hospital.
17. The Police refused to contribute to the victim's funeral logistical arrangements, arguing that they were not responsible for the victim's death.
18. MBC met expenses for coffin, embalming services, food, and transport to ferry the remains of the victim to Chitipa.
19. The Management of the Polytechnic refused to contribute to the funeral expenses saying that the victim died when the college was on holiday.
20. The police unilaterally hired Mr. Senzani of QECH to carry out post-mortem examination on the victim's body without consulting family members of the victim. However, family representatives and some fellow church goers witnessed the process of the post mortem examination.
21. The post mortem examination report revealed that the victim died of septicemia due to infected abdomen organs resulting from multiple gunshot wounds.
22. The post-mortem examination report was only made available to the police. Family members of the victim as well as QECH were not given a copy of the report until after the Commission had intervened. They accessed a copy from the Commission.

Legal Findings

1. THAT Mr. Chanunkha, an employee of MBC shot the victim without due process of the law. The victim died as a result of the severe injuries he sustained. **Therefore, the action of Mr. Chanunkha violated the right to life of the**

victim and arbitrarily deprived him of his life contrary to Section 16 of the Constitution.

2. THAT by brutally shooting the victim without restraint and causing him to endure severe pain and suffering from the fatal gunshot wounds he sustained, Mr. Chanunkha treated the victim in a cruel manner. **Therefore, the action of Mr. Chanunkha violated the right of the victim not to be treated in a cruel, inhuman and degrading manner, contrary to section 19(3) of the Constitution.**
3. THAT at the material time, Mr. Chanunkha was not on his line of duty and should have left the situation in the hands of a police officer. In fact, there was an opportunity to apprehend the victim while he was still in the vehicle and which would not have necessitated any shooting.
4. THAT Mr. Chanunkha violated laws of Malawi and international human rights law regarding the use of force and firearms as enunciated by the United Nations Code of Conduct for law enforcement officials and Basic Principles on the use of force and firearms by law enforcement officials:
 - a) By failing to respect and protect human dignity, and maintain and uphold human rights of the victim.
 - b) By failing to use non-violent means before resorting to the use of a firearm against the victim
 - c) By failing to exercise restraint in the use of a firearm and act proportionate to the legitimate aim that he wanted to achieve.
 - d) By failing to minimize injury to the victim when he used a firearm to incapacitate him.
 - e) By failing to ensure that assistance and medical aid were given to the victim at the earliest possible moment.
5. THAT despite evidence against Mr. Chanunkha and in his own admission, Malawi Police Service has not yet arrested him for causing the death of the victim. At the time of concluding this investigation, police had not opened any homicide file to investigate the death of the victim. The only matter they were focusing on, was the robbery incident concerning Ms. Lusubilo Mtawali.

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:

1. The Inspector General of Police (The IG) should institute criminal investigations into the death of the victim who died a week later after being shot by Mr. Chanunkha on 8th January, 2021.
2. Subject to the criminal investigation in (1) above, the IG should commence criminal proceedings against Mr. Chanunkha and such other persons suspected of committing criminal offences, whose names will be revealed by the criminal investigations.
3. The Director of Public Prosecutions (DPP) should follow up and take appropriate action on the investigations conducted by the IG.
4. The IG should institute disciplinary proceedings against Inspector Nambazo for the indiscipline and unprofessionalism he demonstrated in the way he conducted himself in dealing with the victim.
5. The Director General of MBC should institute disciplinary proceedings against Mr. Chanunkha for the indiscipline and unprofessionalism he showed in the way he conducted himself in dealing with the victim and using his firearm.
6. The Director General of MBC should set up a mechanism to ensure that all security officers at MBC are periodically trained in human rights and basic principles on the use of force and firearms by law enforcement officials.
7. The Ministry of Justice must review all legislation that governs the use of firearms by private security agencies.
8. The Director of Queen Elizabeth Central Hospital should cease the private arrangements for conducting post mortem examinations. There is need for proper procedures for the issuance, documentation and preservation of all post mortem reports.
9. The family members and relatives of Blessings Nyondo may consider making an application to the courts of law against the State to seek compensation for loss of his life.

Conclusion

This report has addressed the human rights issues pertaining to the shooting and subsequent death of Blessings Nyondo. The evidence gathered by the Commission points to the fact that Mr Chanunkha violated several human rights of the victim in contravention of the Constitution and international human rights principles and standards.

The report has made recommendations to relevant authorities and individuals to take action. The Commission is ready to work with all these authorities and individuals 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 1st September, 2021.



Commissioner Baldwin Chiyamwaka

CHAIRPERSON, CIVIL AND POLITICAL RIGHTS COMMITTEE

1.0. INTRODUCTION

- 1.1. This is a report on an investigation carried out by the Human Rights Commission (the Commission) into the shooting and death of Blessings Nyondo (the victim) in Blantyre on. The report provides circumstances surrounding the death of the victim.
- 1.2. The report has been arranged according to specific sections with respect to each of the following areas: alleged human rights violations; the legal mandate of the Human Rights Commission; the methodology followed in and limitations of the investigations; analysis of facts and evidence gathered; factual and legal findings; recommendations; and conclusion.
- 1.3. The report also provides an annex with various documents, records and information relied upon and the list of persons interviewed.

2.0. ALLEGED HUMAN RIGHTS VIOLATIONS

- 2.1. On 1st January 2021, media reports alleged that the victim, then a student at the Malawi Polytechnic, had been shot near Kwacha Roundabout in Blantyre for being suspected as a robber. Some media reports stated that he was shot by the police while others stated that he was shot by a security officer in the employment of the Malawi Broadcasting Corporation (MBC).
- 2.2. It was also alleged that as a result of this shooting, the victim was seriously injured, and consequently admitted at the Intensive Care Unit at the Queen Elizabeth Central Hospital in Blantyre.
- 2.3. Further, it was alleged that the victim died a week later on 8th January, 2021 due to the injuries he sustained during the shooting
- 2.4. The alleged shooting and subsequent death of the victim raised *prima facie* violations of the right to life, the right to human dignity as well as rights of

suspects as guaranteed by the Constitution and other laws. It is against this background, that the Commission, on its own volition and pursuant to its constitutional and statutory mandate, conducted an independent investigation into the alleged human rights violations.

3.0. **MANDATE OF THE COMMISSION**

3.1. The Commission is empowered by the Constitution of the Republic of Malawi (the Constitution) and the Human Rights Commission Act (the Act) to carry out investigations and make recommendations on human rights issues in response to a complaint or on its own volition.

3.2. Section 130 of the Constitution provides as follows:

“The Human Rights Commission shall, with respect to the applications of an individual or class of persons, or on its own motion, have such powers of investigation and recommendation as are reasonably necessary for the effective promotion of the rights conferred by or under this Constitution...”

3.3. Section 12 of the Act provides:

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

3.4. Therefore, it was within the mandate of the Commission to carry out the investigations into the alleged human rights violations. The investigation was carried out by the Commission on its own motion.

4.0. PURPOSE, METHODOLOGY AND LIMITATIONS

4.1 Purpose of the Investigations

The overall purpose of the investigations was to establish the circumstances that led to the shooting and eventual death of the victim. Specifically, the objectives of the investigations were:

- a) To establish the circumstances that led to the shooting of the victim;
- b) To identify the human rights violations occasioned and the perpetrators of those human rights violations; and
- c) To facilitate access to justice, legal remedies for the victims and make recommendations to relevant stakeholders.

4.2 Methodology

The Commission instituted an investigation team comprising staff members of the Commission to carry out the investigations. The investigations were carried out through both individual interviews; collection, collation and review of relevant documents; and site-visits.

4.2.1 Individual and Group Interviews

The investigation was primarily carried out through individual interviews. These interviews were conducted with officials from MBC, Soche Police Unit, Police B Company at Kanjedza, and Southern Region Police Headquarters, and Queen Elizabeth Central Hospital. The investigation team also had interviews with the relations of the victim and Ms. Lusubilo Mtawali.

4.2.2 Collection, Collation and Review of Relevant Documents

The investigation team collected, collated and reviewed relevant laws and documents obtained during the investigations. The documents included, caution statements, post-mortem report and medical records. The Commission also accessed and has in its custody recorded testimony from the victim.

4.2.3 Site-visits

The investigation team visited the site where the alleged robbery took¹ place as well as the scene where the shooting took place. The team was accompanied by officials from MBC including Mr. Chanunkha and Mr. Mgeme Kalirani, a Senior Official at MBC.

4.3 Limitations of the Investigation and Mitigation

This investigation was conducted after the victim had already died. It was difficult to verify what was said about him by others. The victim could not challenge or corroborate the allegations raised against him. To mitigate this challenge, the team had analyzed audio recordings of the victim that were taken before his death. These recordings offered some insights into what the victim went through before his death.

¹ Accompanied by Ms. Lusubilo Mtawali, a victim of the robbery incident

5.0. FACTS AND EVIDENCE

5.1 The Related Robbery Incident Closer to the Scene of the Shooting

- 5.1.1 On or around 18:45 hours on 31st December 2020, Ms. Lusubilo Mtawali left her home in Nkolokosa Township, in Blantyre to attend overnight prayers at Robbins Park in Blantyre. She was alone and travelled by bus. She carried three bags: a handbag, another small bag and a plastic bag. The contents of the three bags included, a bible, a bottle of hand sanitizers, MK1, 000 cash, a table cloth, a pair of shoes, a belt, and assorted fruits.
- 5.1.2 Ms. Lusubilo Mtawali disembarked at the bus stop situated near Kwacha Roundabout. Upon disembarking, she walked along the road towards MBC Kwacha studios. As she was about to branch off to Robbins Park, she was attacked by three young men. The young men robbed her of the bags she was carrying and the contents in the bag.
- 5.1.3 Ms. Mtawali shouted for help and people came to her rescue. Her rescuers chased the robbers but to no avail. Later on, she confirmed that she heard that one of the robbers had been shot.
- 5.1.4 Ms. Mtawali could not identify the victim with particularity or certainty as one of the three persons who robbed her. She gave contradicting statements as to whether or not the victim was one of the young men that had robbed her.
- 5.1.5 None of the robbery suspects have been arrested and all the stolen items have not yet been recovered.

5.2 The Shooting Incident takes Place

- 5.2.1 The victim, a non-residential student at the Malawi Polytechnic, ran away seemingly from the robbery scene and jumped into a vehicle belonging to MBC. In the vehicle, there were already three people on board. The persons on board included, Inspector Nambazo of Police B Company at Kanjedza; Mr. Chanunkha, a Security Officer at MBC; and Mr. Kasimu, an MBC driver. Inspector Nambazo and Mr. Chanunkha were armed with a K2C Rifle and a Boito Pump Gun respectively. Mr. Kasimu was not armed. Further, Inspector Nambazo was in police uniform. The victim was not armed.
- 5.2.2 In the vehicle, the victim was out of breath and seemed confused. However, he managed to say the following words, “*Ndibwino ndifere mugalimoto momuno*” (**It’s better for me to die in the vehicle**). While still in the vehicle, the victim tried to wrestle the gun away from Inspector Nambazo then from Mr. Chanunkha but failed. Inspector Nambazo, Mr. Chanunkha and Mr. Kasimu managed to get out, leaving the victim alone in the Vehicle.
- 5.2.3 Meanwhile the crowd from the robbery scene and passersby who had heard what had happened surrounded the vehicle baying for the victim’s blood. They believed that the victim was one of the robbers and wanted to subject him to mob justice.
- 5.2.4 After Inspector Nambazo, Mr. Chanunkha and Mr. Kasimu had gotten out the vehicle, the victim jumped out of the vehicle and started running away. Mr. Chanunkha pursued the victim for some distance and then shot him at the back. The victim fell down and was motionless.

5.2.5 According to Mr. Chanunkha, he shot the victim for trying to snatch a gun away from him and for running away from the scene. In his own words, he stated that he shot the victim in self-defense and to incapacitate the victim.

5.3 The victim is taken to QECH

5.3.1 Due to the shooting, the victim sustained injuries on the chest and lost a lot of blood. Therefore, the victim was taken to the QECH for medical attention in the MBC vehicle by Inspector Nambazo and Mr. Chanunkha. Ms. Lusubilo Mtawali and another man who was later identified as George Mbewe from Chimwankhunda Township accompanied them to the hospital.

5.3.2 At QECH, the victim was taken to the Adult Emergency Trauma Centre (AETC) for resuscitation. He was later transferred to Ward 5A.

5.3.3 While in Ward 5A, the victim was able to narrate his ordeal to his cousin, Bright Mkandawire. Bright Mkandawire recorded him. In his narration, the victim explained what had happened to him and what led to the shooting incident.

5.3.4 It was the victim's story that he witnessed two men attacking a woman at the robbery scene. When he retreated, some people at the crime scene saw him. They accused him of being one of the robbers and started running after him. When he saw an MBC vehicle approaching, he stopped and boarded it. In the vehicle, he found two men who were armed with guns. The men accused him of being a robber and threatened to shoot him.

5.3.5 The victim stated that even after he was shot, the two men were reluctant to assist him, saying that he was a robber and there was no need to take him to the hospital for medical attention.

5.3.6 On 1st January 2021, a team of two doctors operated on the victim. His stomach had perforated, and on 4th January 2021, he went through another operation. The victim's stomach was re-opened, and it was discovered that bile was leaking into the victim's stomach. A tube was then inserted to drain the bile. The victim died on 8th January 2021 while at QECH.

5.4 The Search for Funeral Logistical Support

5.4.1 Mr. Phillip Mkandawire, who was Blessing's guardian, approached the Commissioner of Police responsible for Southern Region to seek funeral logistical support to ferry the remains. The Commissioner of Police indicated that the police would not take responsibility for the funeral logistics because the shooting was occasioned by an officer from MBC. However, he mentioned that the police would be willing to facilitate the processing of a post mortem examination.

5.4.2 When approached by family members, MBC accepted to provide funeral logistics. MBC hired a mini bus to take the remains of the victim to his home village in Chitipa at a cost of MK1,500,000. The institution also provided money amounting to MK 250,000 for the purchase of a coffin. In addition, MBC met expenses for embalming. Embalming cost MK60,000. The institution also gave out money amounting to MK100, 000 for food and other expenses.

5.4.3 The family members also approached the Registrar of Polytechnic for support, considering that the victim was a student at the college at the time of his death. The college refused to render the assistance sought because the victim had died while the college was closed. The situation would have been different if he had died on campus.

5.5 Post-Mortem Examination is Carried Out

- 5.5.1 The police identified and hired Mr. Senzani of Queen Elizabeth Central Hospital to carry out post-mortem examination on the victim's body without consulting family members. However, family members and church representatives witnessed the postmortem examination. The post-mortem report indicated that the victim had died of septicemia due to infected abdomen organs due to multiple gunshot wounds.
- 5.5.2 The post-mortem examination report was only submitted to the police. However, Family members of the victim were not provided with post mortem copy. A copy of the report was neither deposited with QECH. When family members asked for a copy of the report, the police stated that they could not give it to them because it was the police who instituted the post-mortem examination, and that the arrangement was private between Mr. Senzani and the police. Further, it was mentioned that the post-mortem examination was solely done for criminal investigation purposes.
- 5.5.3 The Director for QECH, Dr. Samson Mndolo, advised the family members of the victim to seek the services of a forensic pathologist to conduct the post-mortem examination on the victim's body. He stated that the hospital did not have such an expert. Therefore, he referred them to Dr. Charles Dzamalala. He mentioned to them that he would assist them if they had difficulties in engaging Dr. Dzamalala or any other pathologist.

5.6 Evidence by Mrs. Dorothy Mwasinga, the victim's Landlady

- 5.6.1 The victim was a tenant at premises belonging to Mrs. Dorothy Mwasinga. According to Mwasinga, the victim had been renting her staff quarters a

Chitawira Township in Blantyre for a period of two years. Mwasinga lets out her premises to several university students.

5.6.2 According to Mwasinga, the victim was a prayerful person and a person of good character and conduct. She further mentioned that the victim was of sober habits. She indicated that one of the conditions for tenants who stay on her premises is that they must not be drunkards. Mwasinga mentioned that on the fateful day, the victim had informed her of his program to attend overnight prayers at the Fountain of Victory Ministries. Therefore, she was shocked to learn that the police accused him of being a thief and shot at him.

5.7 Evidence by Bright Mkandawire, the victim's Cousin

5.7.1 According to Bright Mkandawire, the victim was a non-residential student at the Malawi Polytechnic and was staying in a rented house at Chitawira. He mentioned that the college was closed for holidays and classes were due to recommence the following week.

5.7.2 According to Bright Mkandawire, on 31st December 2020, the victim left his rented house around 19:00 hours and went for overnight prayers at the Fountain of Victory Church in Manje Area. He mentioned that he had earlier on invited him to accompany the victim, but he refused because he had already planned to attend another church service at COMESA Hall.

5.7.3 Bright Mkandawire attended to The victim before his death was one of his guardians at QECH. It was during that period that Bright recorded the audio conversation in which the victim narrated his ordeal.

5.8 Evidence by George Mbewe, a Robbery Witness

5.8.1 George Mbewe was attending a Night of Prayer Service at Robbins Park in Blantyre on the day of both the robbery and shooting incident. He was in the company of other church goers outside Robbins Park. He heard a shout that someone was being robbed on the road near Robbins Park. Together with other bystanders they went to the roadside and pursued the thieves. The robbers disappeared into the bushes on the Njamba Side of the road. Later, they heard that police had shot one of the robbers. According to her, it was the woman that had been robbed who later identified the victim as the one who had robbed her. In terms of identification of the man that robbed the woman, George says that it was the woman who identified the man that was shot as the one who had robbed her.

5.9 Evidence from Mr. Michael Mhagama, a Witness of the Shooting Incident

5.9.1 He witnessed the shooting incident on 31st December 2020. He was travelling from Limbe through Kanjedza to Chimwankhunda around 7pm. He was driving immediately behind the MBC car. When they reached Kwacha Roundabout, the MBC car stopped and he saw two men in civilian clothing come out of the car, one fell into the drain around the roundabout, and the other one was running towards the direction of Chitawira. Immediately after the civilian men came out of the car, two armed men with long guns came out of the same car, and one of the armed men shot at the man who was running towards Chitawira, and he fell down. At the time of the shooting, there was a crowd of people.

6.0 THE APPLICABLE LAW

6.1 Human Rights and Fundamental Freedoms

6.1.1 According to the Constitution, State agencies have the obligations to protect human rights and fundamental 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.”

6.1.2 Under the international human rights law, States and their agencies have the obligation to promote, protect and fulfil human rights of individuals within its jurisdiction.

6.2 The Right to Life

6.2.1 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.”

6.2.2 The right to life is pre requisite for the enjoyment by an individual of other rights, and according to Section 45 of the Constitution, this right cannot be derogated. 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)², the International Covenant on Civil and Political Rights (ICCPR)³; and the African Charter on Human and Peoples Rights (ACHPR)⁴.

6.2.3 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.⁵

6.3 The Right to Human Dignity

6.3.1 Section 19 of the Constitution guarantees the right to human dignity by prohibits cruel, inhuman and degrading treatment or punishment. Section 19(3) provides:

"No person shall be subject to torture of any kind or to cruel, inhuman or degrading treatment or punishment."

6.3.2 According to the Constitution the dignity of persons is inviolable⁶, and the right to human dignity is non-derogable.⁷ Several regional and international human rights instruments which Malawi is party to such as the UDHR, the ICCPR and the ACHPR guarantee every person's right to human dignity and prohibit torture or cruel, inhumane or degrading treatment or punishment.⁸

² See Article 3

³ See Article 6

⁴ See Article 4

⁵ See *Forum of Conscience vs. Sierra Leone, Communication 223/98*

⁶ See Section 19(1) of the Constitution

⁷ See section 45 of the Constitution

⁸ See Article 3 of the UDHR; Article 7 of the ICCPR; and Article 5 of the ACHPR

The Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) also prohibits torture and other cruel, inhumane or degrading treatment or punishment. Torture, Cruel, inhumane or degrading treatment or punishment has been defined by the African Commission on Human and Peoples Rights in the case of **International Pen and Others v Nigeria**,⁹ to include

“...not only actions which cause serious physical or psychological suffering, but which humiliate the individual or force him or her to act against his will or conscience.”

6.3.3 Code of Conduct for law enforcement officials (the Code of Conduct)¹⁰ require law enforcement officials to respect and protect human dignity and maintain and uphold the human rights of all persons.¹¹

6.4 Use of Force and Firearms by Law Enforcement Officials

6.4.1 According to the Basic Principles on the use of force and firearms by law enforcement officials (the Basic Principles)¹², law enforcement officials are required to use force and firearms in their work of protecting life and property as a last resort. Principles 4 states:

“Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”

⁹ ACHPR, Comm. Nos. 137/94, 139/94, 154/96 and 161/97 (1998)

¹⁰ Adopted by General Assembly resolution 34/169 of 17 December 1979

¹¹ See Article 2 of the Code of Conduct

¹² adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 7 September 1990.

6.4.2 However, there are instances when law enforcement officials may use force or firearms. Principle 9 of the Basic Principles provide:

Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

6.4.3 In terms of principle 10 of the Basic Principles, the law enforcement officials are required to identify themselves and give a warning before using force or firearms in the circumstances in which the use of force or firearms is lawfully allowed. Principle 10 provides:

In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

6.4.4 In situations where the use of force and firearms is lawfully allowed, the Basic Principles require law enforcement officials to observe certain conditions. Principle 5 of the Basic Principles provides:

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;*
- (b) Minimize damage and injury, and respect and preserve human life;*
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;*
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”*

6.4.5 Code of Conduct for law enforcement officials also regulates the use of force and firearms by law enforcement officials. Article 2 of Code of Conduct provides that Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. Further, the Code of Conduct defines law enforcement officials as all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

6.4.6 In deciding the case of *Leonidis vs. Greece*¹³ where the police shot an 18-year-old person who posed no threat to life, the European Court of Human Rights stated as follows:

“Accordingly, the legitimate aim of effecting a lawful arrest can only justify putting human life at risk in circumstances of absolute necessity. The Court considers that in principle there can be no such necessity where it is known that the person to be arrested poses no threat to life

¹³ 2009 ECHR 43326/05

or limb and is not suspected of having committed a violent offence, even if refraining from using lethal force may result in the opportunity to arrest the fugitive being lost.”

6.4.7 In deciding the case of *R v. Cheuka and Others*¹⁴, where the shooting in the back of a lorry driver, who was not armed or posed a threat to life was found to be unlawful, Justice Mzikamanda made reference to the provisions of the **Basic principles and the Code of Conduct**. He recognized them as forming part of the laws of Malawi. In that case, Justice Mzikamanda stated as follows:

“I found the United Nations Basic Principles on the use of Force and Firearms by Law Enforcement Officials and some relevant foreign case authorities illuminating... I have studied them and I find them useful and important in complementing the local laws.

7.0 ANALYSIS OF EVIDENCE VIS-À-VIS THE LAW

7.1 Whether or not the Life of the victim was Arbitrarily Deprived

7.1.1 The Constitution¹⁵ and various human rights instruments which Malawi is a party to including the UDHR¹⁶; the ICCPR¹⁷; and the ACHPR¹⁸ guarantee the right to life of every person and proscribes the violation of this right.

7.1.2 The Constitution is very clear on the deprivation of life. In terms of Section 16 of the Constitution, every person is entitled to the right not to have his life arbitrarily deprived. However, the execution of the death sentence imposed

¹⁴ (73 of 2008) [2009] MWCH 49 (02 April 2009)

¹⁵ See Section 16 of the Constitution

¹⁶ See Article 3

¹⁷ See Article 6

¹⁸ See Article 4

by a competent court is not regarded as arbitrary deprivation of life.¹⁹ According to the ACHPR any violation to the right to life without due process amounts to arbitrary deprivation of life.²⁰

7.1.3 Evidence gathered by the Commission in its investigations revealed that on the night of 31st December, 2020, the victim was alive and in robust physical health. In fact, he had planned to attend overnight prayers at the Fountain of Victory International Ministries Church at Manje. However, he got injured and subsequently died from the injuries that he sustained when Mr. Chanunkha, a security officer in the employment of MBC, shot at him that night. The post-mortem examination pointed to the fact that the victim had died of gunshot *septicemia* that infected abdomen organs. At the time when the victim was shot and subsequently died of gunshot wounds, he was alive and just a robbery suspect. No court had tried and sanctioned him to die by being shot.

7.1.4 In the final analysis, it is the Commission's finding that the right to life of the victim was violated and his life arbitrarily deprived by Mr. Chanunkha, a law enforcement officer in the employ of MBC. Mr. Chanunkha shot the victim without the due process of the law. The victim died as a result of the severe injuries he sustained after being shot by Mr. Chanunkha.

7.2 Whether or not the victim was treated in a Cruel, Inhuman and Degrading Manner

7.2.1 Every person has inherent dignity and need to be respected. For this reason, the Constitution and international human rights law recognize the right to

¹⁹ See the Proviso to section 16 of the Constitution

²⁰ See *Forum of Conscience vs. Sierra Leone, Communication 223/98*

human dignity and prohibits treating persons in a cruel, inhuman and degrading manner.²¹ According to the ACHPR, actions that cause physical and psychological suffering or humiliate an individual can be said to be cruel, inhuman and degrading.

7.2.2 In the present matter, the victim experienced severe physical suffering from the fatal gunshot wounds inflicted by Mr. Chanunkha. By brutally shooting the victim, without restraint, Mr. Chanunkha treated him cruelly and as if he was not a human being. Further, when the victim was injured, both Mr. Chanunkha and Inspector Nambazo were reluctant to take the victim to the hospital for medical attention saying that he was a criminal. It is, therefore, the Commission's finding that the victim was treated in a cruel, inhuman and degrading manner.

7.3 Adherence to the Constitution and International Human Rights Standards and Principles

7.3.1 According to Section 15 of the Constitution, every person has a duty to respect and uphold all human rights guaranteed. In performance of their duty, law enforcement officials are required "*to respect and protect human dignity and maintain and uphold human rights of all persons.*"²² According to the Code of Conduct '*law enforcement officials*' includes all officers of the law who exercise police powers, especially the powers of arrest or detention.²³ In the present case, both Inspector Nambazo and Mr. Chanunkha are law enforcement officials according to the Code of Conduct. Evidence gathered shows that Inspector Nambazo was a police officer and Mr. Chanunkha was a security officer working with MBC, a public institution. Mr. Chanunkha

²¹ See Section 19(3) of the Constitution.

²² See Article 2 of the Code of Conduct

²³ See commentary to Article 1 of the Code of Conduct

exercises police powers and is authorized to use a firearm. As law enforcement officers, both Inspector Nambazo and Mr. Chanunkha were under obligation to respect and protect human rights in his work.

7.3.2 According to the Basic Principles, law enforcement officers have legal and moral obligation to apply *non-violent means before resorting to the use of force and firearms*. However, they are permitted to use force or firearms only “*if other means remain ineffective or without any promise of achieving the intended result*”²⁴ and “*when strictly necessary and to the extent required for the performance of their duty.*” In the present matter, if Inspector Nambazo and Mr. Chanunkha were indeed interested in arresting the victim, they would have done that when they were in the MBC vehicle with him. They had firearms, he did not. They were three with the driver, and the victim was alone. The victim was in close proximity with them, and they could have just overpowered and arrested him without much ado. This would have been a less extreme means of effecting the arrest than resorting to the use of a firearm.

7.3.3 The evidence we gathered points to the fact that the victim was not really running away from lawful arrest. He gave himself up to the law enforcement officials in the vehicle and even mentioned to them that it was better for him to die in the vehicle than outside. If the victim was indeed running away from being arrested as suggested by Mr. Chanunkha, the law enforcement officers had other less extreme alternative means to effect the arrest. For instance, they would have mobilized the group of onlookers who were at the scene to help him chase and catch the victim. In that event, the arrest would have been effected without the use of a firearm.

²⁴ See Paragraph 4 of the Basic Principles

7.3.4 Legally, law enforcement officials are allowed to use force or firearms to protect life in circumstances where life is under threat.²⁵ In this regard, law enforcement officials can use force or firearms in self-defence or defence of others; in order to prevent commission of a serious crime; in effecting an arrest of a person endangering life or resisting arrest or escaping; or where less extreme means are insufficient. In the present case, evidence gathered shows that the victim did not pose any threat to life of the any individual including Inspector Nambazo and Mr. Chanunkha. The victim was very helpless. He sought refuge in the vehicle where armed law enforcement officials were. He was not armed himself. He even mentioned to Inspector Nambazo and Mr. Chanunkha that he would rather die in their vehicle than elsewhere. His running away was evident enough that the victim felt vulnerable. In fact, it was his own life that was under threat. He was afraid of the mob and the law enforcement agents who informally accused him of committing an offence and threatened to shoot at him. Therefore, the argument by Mr. Chanunkha that he shot the victim because he was defending himself from the victim and wanted to incapacitate him does not make sense. In fact, by wrestling with the law enforcement officials in the vehicle and subsequently running away from them and the mob, the victim was protecting his life. Unfortunately, he lost it in the hands of Mr. Chanunkha.

7.3.5 Even if circumstances had arisen for the law enforcement officials to lawfully use force or firearms in dealing with the victim in this matter, the action of

²⁵ As per Principle 9 of the Basic Principles and Justice Mzikamanda in the case of *R v. Cheuka and Others*

Mr. Chanunkha would not pass the limitations imposed by Principle 5 of the Basic Principles.

7.3.6 Principle 5 of the Basic Principles require law enforcement officials to exercise restraint in the use of force or firearm and act proportionate to the legitimate aim to be achieved. In the present case, it was Mr. Chanunkha's defence that he shot the victim in order to incapacitate him. However, he did not act in proportionate to the legitimate objective that he wanted to achieve. If he shot the victim in order to incapacitate the victim and not to kill him, he would have aimed at the legs which the victim was using for running away and not the chest where vital organs are. As a security officer and a retired soldier, Mr. Chanunkha would have known better that shooting a person on the chest would be fatal. By shooting the victim in the chest, Mr. Chanunkha did not only intend to disable but also to kill the victim.

7.3.7 Principle 5 of the Basic Principles require law enforcement to minimize damage and injury, and respect and preserve human life whenever they use force or firearms. In the present matter, there is overwhelming evidence that the victim was severely injured and subsequently lost life due to gunshot wounds that were occasioned by Mr. Chanunkha's shooting.

7.3.8 When persons have sustained injuries due to use of force or firearms, Principle 5 of the Basic Principles require law enforcement officials to ensure that assistance and medical aid are rendered to the injured at the earliest possible moment. Evidence gathered by the Commission, especially from the audios by the victim show after Mr. Chanunkha shot the victim and injured him, the law enforcement officials (i.e. Inspector Nambazo and Mr. Chanunkha) took time to take the victim to the hospital for medical attention even though they have a readily available vehicle at their disposal.

According to them, the victim was a robber and did not require any medical attention.

7.3.9 In the circumstances in which the use of force or firearms is lawfully allowed, law enforcement officials are required to identify themselves and give a warning before using force or firearms in accordance with Principle 10 of the Basic Principles. In the present case, there is no evidence to show that Mr. Chanunkha identified himself as a law enforcement official and gave a clear warning of his intention to use his firearm. There is also no evidence to show that he failed to give such warning owing to the fact that doing so would create a risk of death or serious harm to him or others persons.

8.0 FINDINGS

Based on the facts and evidence gathered and analysis made, the Commission has come up with the following findings:

8.1 Factual findings

- a) It was reported that on or around 18:45 hours on 31st December 2020, Ms. Lusubilo Mtawali, a resident of Nkolokosa Township in Blantyre, was allegedly attacked by three unidentified persons as she was on her way to Robbins Park in Blantyre for overnight prayers. The attackers, allegedly robbed her of her three bags and their contents. She called for help and fellow congregants who had been gathered outside Robbins Park tried to apprehend the robbers, but in vain.
- b) Later on, she confirmed that she heard that one of the robbers had been shot by police. However, Ms. Mtawali could not identify the victim with particularity or certainty as being one of the three persons that had robbed her.

- c) The victim was a non-residential student at the Malawi Polytechnic and a tenant at the premises belonging to Mrs. Dorothy Mwasinga in Chitawira. On the night of 31st December 2020, the victim had planned to attend overnight prayers at the Fountain of Victory Church.
- d) It is on record, that he witnessed the robbery incident at Robbins Park and decided to escape from the scene. In the process, he stopped and jumped into a vehicle belonging to MBC.
- e) In the vehicle, there were three people, namely, Inspector Nambazo of Police B Company at Kanjedza; Mr. Chanunkha, a Security Officer at MBC; and Mr. Kasimu, an MBC driver. Inspector Nambazo and Mr. Chanunkha were armed with a K2C Rifle and a Boito Pump Gun respectively. Mr. Kasimu was not armed. Further, Inspector Nambazo was in police uniform.
- f) According to a statement by Inspector Nambazo, the victim was out of breath and seemed confused when he entered the MBC vehicle. He just managed to say the following words, “*Ndibwino ndifere mugalimoto momuno*” (**It’s better for me to die in the vehicle**).
- g) According to both Inspector Nambazo and Mr Chanunkha, the victim tried to snatch their guns but he failed. It is the Victim’s statement however, that he sought refuge from them but they accused him of being a thief and threatened to shoot him before forcing him out of the car.
- h) Inspector Nambazo, Mr. Chanunkha and Mr. Kasimu managed to get out, leaving the victim alone in the Vehicle.
- i) Meanwhile the crowd from the robbery scene and passersby, who had witnessed the events surrounded the vehicle baying for the victim’s blood. They thought that the victim was one of the robbers and wanted to subject him to mob justice.

- j) After Inspector Nambazo, Mr. Chanunkha and Mr. Kasimu, had gotten out the vehicle, the victim jumped out of the vehicle and started running away.
- k) Mr. Chanunkha pursued the victim and then shot him at the back. The victim fell down and was motionless. According to Mr. Chanunkha, he shot the victim for trying to snatch his gun away and for escaping arrest. He shot the victim in self-defense and to incapacitate the victim.
- l) Both Mr Chanunkha and Inspector Nambazo failed in their responsibility by not arresting the victim when he was in the vehicle.
- m) In an audio message recorded before his death, the victim stated that he witnessed the robbery incident and while escaping from the scene, he decided to seek refuge in the MBC vehicle. But as he entered the vehicle, the officers accused him of being one of the thieves and threatened to shoot him. They ordered him to get of the vehicle. He begged them not to shoot him but rather take him to a police station if they thought that he was a thief. The officers pointed their guns at him, forced him out of the vehicle and later shot at him as he was escaping.
- n) The victim sustained injuries on the chest and lost a lot of blood due to the shooting. He was taken to the QECH for medical attention in the MBC vehicle by Inspector Nambazo and Mr. Chanunkha, long after he was shot. According to his friends and relatives, he was just dumped at QECH by Inspector Nambazo and Mr. Chanunkha. As a result, he did not receive urgent medical attention.
- o) Later, the victim was taken to the Adult Emergency Trauma Centre (AETC) for resuscitation and then, he was admitted in Ward 5A. He went through two operations.

- p) While at QECH, the victim narrated his ordeal to his friend and cousin, Bright Mkandawire. He also explained what had happened to him and what led to the shooting incident. This was preserved in an audio statement which the Commission has accessed and this report makes reference to it.
- q) On 8th January, 2021 the victim died in hospital.
- r) The Police refused to contribute to the victim's funeral logistical arrangements, arguing that they were not responsible for the victim's death.
- s) MBC met expenses for coffin, embalming services, food, and transport to ferry the remains of the victim to Chitipa.
- t) The Management of the Polytechnic refused to contribute to the funeral expenses saying that the victim died when the college was on holiday.
- u) The police unilaterally hired Mr. Senzani of QECH to carry out post-mortem examination on the victim's body without consulting family members of the victim. However, family representatives and some fellow church goers were allowed to witness the process of the post mortem examination.
- v) The post mortem examination report revealed that the victim died of septicemia due to infected abdomen organs resulting from multiple gunshot wounds.
- w) The post-mortem examination report was only made available to the police. Family members of the victim as well as QECH were not given a copy of the report until after the Commission had intervened. They accessed a copy from the Commission.

8.2 Legal Findings

- a) THAT Mr. Chanunkha, an employee of MBC shot the victim without due process of the law. The victim died as a result of the severe injuries he sustained. Therefore, the action of Mr. Chanunkha violated the right to life

of the victim and arbitrarily deprived him of his life contrary to Section 16 of the Constitution.

- b) THAT by brutally shooting the victim without restraint and causing him to endure severe pain and suffering from the fatal gunshot wounds he sustained, Mr. Chanunkha treated the victim in a cruel manner. Therefore, the action of Mr. Chanunkha violated the right of the victim not to be treated in a cruel, inhuman and degrading manner, contrary to section 19(3) of the Constitution.
- c) THAT at the material time, Mr. Chanunkha was not on his line of duty and should have left the situation in the hands of a police officer. In fact, there was an opportunity to apprehend the victim while he was still in the vehicle and which would not have necessitated any shooting.
- d) THAT Mr. Chanunkha violated laws of Malawi and international human rights law regarding the use of force and firearms as enunciated by the United Nations Code of Conduct for law enforcement officials and Basic Principles on the use of force and firearms by law enforcement officials:
 - i. By failing to respect and protect human dignity, and maintain and uphold human rights of the victim.
 - ii. By failing to use non-violent means before resorting to the use of a firearm against the victim
 - iii. By failing to exercise restraint in the use of a firearm and act proportionate to the legitimate aim that he wanted to achieve.
 - iv. By failing to minimize injury to the victim when he used a firearm to incapacitate him.
 - v. By failing to ensure that assistance and medical aid were given to the victim at the earliest possible moment.
- e) THAT despite evidence against Mr. Chanunkha and in his own admission, Malawi Police Service has not yet arrested him for causing the death of the victim. At the time of concluding this investigation, police had not opened any homicide file to investigate the death of the victim. The only matter they were focusing on, was the robbery incident concerning Ms. Lusubilo Mtawali.

9.0 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:

- a) The Inspector General of Police (The IG) should institute criminal investigations into the death of the victim who died a week later after being shot by Mr. Chanunkha on 8th January, 2021.
- b) Subject to the criminal investigation in (1) above, the IG should commence criminal proceedings against Mr. Chanunkha and such other persons suspected of committing criminal offences, whose names will be revealed by the criminal investigations.
- c) The Director of Public Prosecutions (DPP) should follow up and take appropriate action on the investigations conducted by the IG.
- d) The IG should institute disciplinary proceedings against Inspector Nambazo for the indiscipline and unprofessionalism he demonstrated in the way he conducted himself in dealing with the victim.
- e) The Director General of MBC should institute disciplinary proceedings against Mr. Chanunkha for the indiscipline and unprofessionalism he showed in the way he conducted himself in dealing with the victim and using his firearm.
- f) The Director General of MBC should set up a mechanism to ensure that all security officers at MBC are periodically trained in human rights and basic principles on the use of force and firearms by law enforcement officials.
- g) The Ministry of Justice must review all legislation that governs the use of firearms by private security agencies.
- h) The Director of Queen Elizabeth Central Hospital should cease the private arrangements for conducting post mortem examinations. There is need for proper procedures for the issuance, documentation and preservation of all post mortem reports.
- i) The family members and relatives of Blessings Nyondo may consider making an application to the courts of law against the State to seek compensation for loss of his life.

10.0 CONCLUSION

- 10.1 This report has addressed the human rights issues pertaining to the shooting and subsequent death of Blessings Nyondo. The evidence gathered by the Commission points to the fact that Mr Chanunkha violated several human rights of the victim in contravention of the Constitution and international human rights principles and standards.
- 10.2 The report has made recommendations to relevant authorities and individuals to take action. The Commission is ready to work with all these authorities and individuals to ensure that the violations of human rights identified in this report are remedied.
- 10.3 The Commission will follow up on the progress made on all recommendations in this report by 1st September, 2021.