

MALAWI HUMAN RIGHTS COMMISSION



**AN INVESTIGATION REPORT INTO
ALLEGATIONS OF CORPORAL PUNISHMENT AND CHILD SEXUAL ABUSE AT
KALIBU ACADEMY PRIVATE SCHOOL**

EXECUTIVE SUMMARY

JULY 2021 - NOVEMBER 2022

1.0 BACKGROUND

- 1.1 The Malawi Human Rights Commission (the Commission), pursuant to its mandate under section 129 of the Constitution of the Republic of Malawi (the Constitution), and in terms of the Human Rights Commission Act, conducted an investigation into allegations of child sexual abuse and corporal punishment at Kalibu Academy. The Commission learnt through social that a male teacher at Kalibu Academy in Blantyre attempted to rape a female learner in class after lessons. The issue attracted a lot of public attention and an avalanche of comments that further alleged that apart from the reported incident, the school also subjected its students to corporal punishment as an appropriate disciplinary measure.
- 1.2 The Commission observed that the matter signaled prima facie violations of human rights enshrined in the Constitution, particularly the right to personal liberty (section 18), the right to human dignity (section 19), the best interests of the child (section 23), and the right to education (section 25). Pursuant to its constitutional and statutory mandate, the Commission instituted an independent investigation into the allegations.
- 1.3 The Commission was also moved by increasing calls both at local and international levels to urge the state to among others eradicate harmful practices including corporal punishments, address all inhuman or degrading treatment or punishment, and ensure prompt and thorough investigation of all offences and providing all necessary assistance to the victims.
- 1.4 The investigation is also in response to the call by both the African Committee of experts on the Rights and welfare of the Child (ACERWC), the United Nations Committee on the Rights of the Child (UNCRC) through their Concluding observations for 2017 and 2018 which urges the Malawi Government to review relevant pieces of legislation and expressly prohibit corporal punishment and other cruel or degrading forms of punishment in all settings in order to protect children from corporal punishment both in schools and in the homes including other private settings.
- 1.5 The 2020 UPR recommendations urge the state to eradicate harmful cultural practices including corporal punishment, child labour, or forced labour and ensure effective investigation of the same.
- 1.6 In early 2021, the African Committee of Experts on Human and People's Rights (ACEHPR) in its list of issues asked the Government of Malawi to explain to the Committee what it has done to implement the recommendations from the public inquiry which the Commission conducted in 2016 including the need to amend the Education Act 2013 in order to address corporal punishment in schools. This was after the state submitted its 2nd Periodic Report on the African Charter on Human and People's Rights and the Maputo Protocol covering the period between May 2015 to March, 2019.

This report therefore presents the Commission's approach to the investigation, its factual and legal findings, and ultimately recommendations.

2.0 OBJECTIVES

2.1 Main Objective

The main objective of this investigation was to establish facts surrounding the allegations of the administration of corporal punishment and sexual abuse at Kalibu Academy.

2.2 Specific Objectives

- 2.2.1 To ascertain the administration of corporal punishment at the school
- 2.2.2 To establish the circumstances of the alleged child sexual abuse;
- 2.2.3 To determine the human rights violations occasioned;
- 2.2.4 To facilitate access to justice based on the findings
- 2.2.5 To recommend remedial measures to relevant authorities.

3.0 METHODOLOGY

3.1 Preliminary Investigations and Activities

- 3.1.1 The Commission conducted face-to-face with key parties involved in the allegations and some relevant players with interest in the matter were done. These include Kalibu Academy staff, teachers, the alleged victim for the sexual abuse, her mother, her father, the alleged perpetrator and Chileka Police.
- 3.1.2 On 5th July 2021, the Commission issued a public notice calling upon the general public, parents, teachers and learners from Kalibu Academy who had knowledge and were privy to any incident of child abuse at Kalibu Academy to make submissions to the Commission which were thoroughly reviewed. Through this, the Commission identified witnesses who were willing to testify during the public inquiry and recorded statements prior to the public hearings.
- 3.1.3 The Commission recorded a total of fourteen (14) witnesses but only five (5) were willing to testify physically. The Commission also recorded submissions from those who did not want to testify physically through audio and this was played at the inquiries.
- 3.1.4 The Commission also engaged the Ministry of Education in order to appreciate if they were aware of the issues under investigation and if so, what efforts they had taken to address them.

3.2 Document Collection.

The Commission collected and reviewed relevant documents such as; reports, circulars, school rules, guidelines and policies from Kalibu Academy. The Commission also reviewed relevant national and international legal instruments.

3.3 Public hearing.

- 3.3.1 The Commission instituted a quasi-judicial hearing where witnesses against Kalibu Academy and the Respondent (Kalibu Academy) were in attendance and were given a chance to tell their side of the story, rebut and cross examine the other side.
- 3.3.2 The public hearing was chaired by Commissioner Dr. Sunduzwayo Madise who was helped by Commissioners: Chikondi Chijozi, Dr Bertha Sefu and Grace Malera
- 3.3.3 Kalibu Academy were represented by DNC Chambers, Attorneys at Law led by Davis Njobvu.
- 3.3.4 Two hearings were held, the first one on 5th May, 2022 at Golden Peacock Hotel in Blantyre and the second one on 15th June, 2022 at Crossroads Hotel, Blantyre.
- 3.3.5 Kalibu Academy witnesses submitted their responses through written statements to the Commission through their Counsel after taking oath.

3.4 Safeguarding guidelines

- 3.4.1 The Commission conducted a risk assessment to safeguard the witnesses from any risks that could arise as a result of their involvement in the investigation. All the identified risks were thoroughly assessed and their potential risks were addressed.

4.0 LIMITATIONS

- 4.1.1. Efforts to interview the Director of Kalibu Academy Pastor Michael Howard to verify both allegations proved futile since he was always unavailable for multiple reasons.
- 4.1.2. Kalibu Academy took an injunction against the Commission that caused delays in the commencement of the public hearing
- 4.1.3. Kalibu Academy changed legal representation in the course of the investigation. This had a bearing on the progress of the hearings.
- 4.1.4. There were multiple postponements of hearings occasioned by non-adherence to notices and the non-availability of witnesses for Kalibu Academy.
- 4.1.5. Kalibu Academy changed legal representatives during the course of the hearings.
- 4.1.6. The Commission was burdened with budgetary constraints which rendered it difficult to hold another hearing to hear oral testimony from Kalibu Academy and cross-examine the witnesses for Kalibu Academy.
- 4.1.7. The Commission collected statements from 14 witnesses but only 5 witnesses came forward to testify.
- 4.1.8. Current students and parents were afraid to testify for fear of reprisals and social media backlash despite the Commission assuring them of their safety and to protect them.
- 4.1.9. Even though there were allegations of sexual abuse at the school, none of the witnesses testified on these allegations.

5.0 KEY FINDINGS

The following are the key findings in relation to the objectives and other emerging issues with regard to the allegations:

5.1 Corporal Punishment

- 5.1.1** Kalibu Academy administers corporal punishment on students as an appropriate disciplinary measure for unruly behaviour and other forms of misconduct. Corporal punishment takes various forms such as canning, spanking, donkey standing, standing in the same position for a long time, detention, and prison.
- 5.1.2** Canning is the type of punishment that is mostly administered at the school. The school's Disciplinary Issues Book where the school records all disciplinary matters indicates that canning is mostly used as a measure for punishing and disciplining students.
- 5.1.3** Students at Kalibu Academy are forcibly subjected to undertake hard labour as a form of punishment. These include digging a swimming pool, digging and ferrying sand in a wheelbarrow, cutting grass, carrying rocks and carrying bricks, watering flowers and plants, digging manures and applying them in the gardens, and cleaning toilets during learning hours. The physical labour would often be undertaken without any protective garments and would sometimes last for hours or even extend to days until the task is completed to the teacher's satisfaction.
- 5.1.4** Students are subjected to corporal punishment for breaking school rules and for unruly behaviour. These include smoking and being found in possession of Indian hemp, taking alcohol, being late for classes or dining room, not doing their homework, being rude to a teacher, sneaking out of campus, and speaking Chichewa.
- 5.1.5** Members of staff are responsible for administering the punishments. The members of staff mentioned in the testimonies are; Pastor Michael Howard, Pastor Paisley Mavutula, Norma Konono, Andrew Mhango, Sphiwe Masuku, Silibaziso Chibvongodzi, Manford Nhlane (Deceased) and Gilbert Nyanjaya. They mostly use broomsticks to whip or cane students and forced confession.
- 5.1.6** School prefects also administer corporal punishment on fellow students. The prefects derive powers from the administration and when this occurs the administration defends them.
- 5.1.7** Some parents sign in the disciplinary issues book (black book) consenting or encouraging the school to administer corporal punishment to their children as a disciplinary measure.

- 5.1.8** At least one student was seriously injured as a result of corporal punishment. Furthermore, Corporal punishment psychologically affected students some of whom sought psychosocial services in various facilities in the country.
- 5.1.9** There are notable inconsistencies in the information given by some witnesses for Kalibu Academy between what they told the Commission during one-on-one interviews at the commencement of the investigation and what they have presented in their witness statements and that these inconsistencies signify the fact that corporal punishment and hard labour is administered at Kalibu Academy.
- 5.1.10** There is a culture of secrecy at the school where parents are mandated to sign that they will not participate in any criticism of Kalibu Academy, failing which Kalibu Academy will have the right to suspend or expel their child.
- 5.1.11** The Commission was served with two sets of school rules and regulations. The first set that was submitted to the Commission during the initial investigation and had clauses permitting the administration of corporal punishment and Manual labour. However, the second set which was attached to Pastor Paisley Mavutula's witness statement had the clauses permitting corporal punishment, manual labour, absolute powers to school prefects, and a culture of secrecy removed.
- 5.1.12** In relation to 5.1.11 above, Kalibu Academy made some notable changes or amendments to its School Rules and Regulations without notifying the Commission or acknowledging it in their witness statements. Further, it is the Commission's considered view that these changes, alterations, or amendments were made in bad faith to mask the truth during the Commission's investigation
- 5.1.13** There are reports on the school inspections conducted by the Ministry of Education (MoE) in 2016, 2019, and 2020 which established that students from Kalibu Academy are subjected to corporal punishment as a disciplinary measure. Following these findings, the MOE recommended that management should abolish the administration of corporal punishments and other degrading treatments. However, the school continues administering corporal punishment.
- 5.1.14** Kalibu Academy does not have child-friendly reporting mechanisms and policies, such as Parents Teachers Association (PTA), Safeguarding Policy, and a student council
- 5.1.15** Kalibu Academy restricts students from freely practicing their religion. This includes those practicing Christianity but of different denominations than that of Kalibu Academy

5.1.16 Teachers at Kalibu Academy lack knowledge and training on effective non-violent disciplinary measures as a result they use corporal punishment as an easy option for maintaining discipline and order for the students.

5.1.17 Some claims in the sworn statements by witnesses for Kalibu Academy were exclusively absorbed in rebutting allegations of administration of corporal punishment and hard labour at the school and masking the truth but not necessarily presenting the facts on the ground regarding the administration of corporal punishment, Hard labour, right to religion and a culture of secrecy. Thus, the totality of the evidence against Kalibu Academy attests to this fact

5.1.18 In view of all the above, the conduct by Kalibu Academy infringes on the student's constitutional rights to personal liberty (Section 18), human dignity (Section 19), and the best interests of the child by administering punishment harmful to their physical, mental and social development (Section 23), right to education (Section 25) and right to freedom of conscience (Section 33) and freedom of religion.

10.1. Alleged Child Sexual Abuse

10.1.1. The totality of the evidence presented to the Commission did not establish that child sexual abuse occurred at the school as alleged by the girl and her mother.

10.1.2. Even though there were allegations of sexual abuse at the school, evidence gathered failed to prove allegations of sexual abuse at the school as none of the witnesses testified on these allegations.

10.1.3. However, there were other reported cases of child sexual abuse at the school, the case of a teacher who was dismissed on grounds of holding a girl in the waist and wanting to kiss her, and another case of child sexual abuse which was reported by female learners at the school involving the teacher in question and the teacher was dismissed.

10.1.4. The school takes action once a case of sexual abuse has been reported to the authorities.

11.0 RECOMMENDATIONS

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

11.1 KALIBU ACADEMY

11.1.1 Immediately and completely abolish the administration of corporal punishment.

- 11.1.2 Review the school rules, regulations, and policies to remove clauses permitting the administration of corporal punishment within 6 months of the release of this report.
- 11.1.3 Develop, implement and enforce a safeguarding policy that should adopt child-friendly reporting structures where students are empowered to freely voice out their concerns.
- 11.1.4 Adopt non-violent methods of disciplining all students to ensure that the classroom remains a safe and protective learning environment for the students.
- 11.1.5 Reinstitute the previously dissolved Parent Teachers Association (PTA) and establish the Students Council within three months of the release of this report.
- 11.1.6 The school should ensure that members of staff are trained on child protection, positive discipline techniques, and Anti sexual harassment within six months of the release of this report.

11.2 MINISTRY OF EDUCATION

- 11.2.1 Must Monitor compliance with recommendations made to Kalibu Academy
- 11.2.2 Must ensure that the National Teachers Council actively enforces the professional conduct of all teachers as provided for in the Education Act.
- 11.2.3 Must implement the recommendation in Article 19 of the Convention of the Rights of the Child and expedite the amendment of the Education Act of 2013 and other policies in order to explicitly prohibit administration of corporal punishment in all primary and secondary educational institutions, private and public as is the case in Zambia and South Africa who have completely prohibited corporal punishment in schools.
- 11.2.4 Must ensure that all schools public or private have child safeguarding policies.

11.3 COMMITMENTS BY THE COMMISSION

The Commission commits to performing the following:

- 11.3.1 Monitor the implementation of the recommendations made to both Kalibu Academy and the Ministry of Education
- 11.3.2 Train and sensitise the school staff, teachers, and learners on child rights and child protection, including issues of corporal punishment and good governance. This should target all private schools.
- 11.3.3 Monitor the implementation of the UPR recommendations on corporal punishment, and UNCRC and ACERWC 2017 and 2018 concluding observations which urges the Malawi Government to review relevant laws and expressly prohibit corporal punishment in all settings.
- 11.3.4 Advocate for the prohibition of corporal punishment in the laws as is the case to regional trends in Zambia and South Africa who have completely banned corporal punishment in schools and other settings.

12. CONCLUSION

The Commission acknowledges that Kalibu Academy has already taken steps to address some of the recommendations that have been made by the Commission by reviewing its School Policies that provided for corporal punishment. This was discovered through the evidence that was provided by Kalibu Academy in its response to the allegations of corporal punishment. The Commission expects that such reforms shall be sustained beyond these investigations and that Kalibu Academy shall comply with human rights standards in the administration of discipline at the school. The Commission will monitor all recommendations made to various stakeholders to ensure full protection of the rights of the child and that the best interests of the child is upheld in all decisions concerning children in Malawi.